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# TRANSCRIPT OF RECORD

# Supreme Court of the United States

OCTOREL TERM, 1937

# No. 757

THE UNITED STATES OF AMERICA, APPELLANT.

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES, APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED PERRUARY 5, 1438,

# No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT, APPELLANT,

V25

MILO W BEKINS AND REED J. BEKINS, AS TRUS-TEES, APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL. ETC

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[fol. 6]

# IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

#### No. 4575

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of its Debts

PETITION FOR CONFIRMATION OF PLAN FOR COMPOSITION AND READJUSTMENT OF ITS DEBTS—Filed September 21, 1937

To the Honorable the District Court of the United States for the Southern District of California, Northern Division:

The duly verified petition of Lindsay-Strathmore Irrigation District respectfully shows:

- 1. Petitioner is an irrigation district, duly organized and existing pursuant to and under and by virtue of the provisions of that certain act of the Legislature of the State of California known as the "California Irrigation District Act", approved March 31, 1897, and the acts amendatory thereof and supplemental therete, and comprises approximately fifteen thousand two hundred sixty (15,260) acres of land and is located wholly in the County of Tulare, State of California, and within the territorial jurisdiction of the above entitled court, and has its principal office at Lindsay in said County of Tulare, State of California.
- 2. Petitioner is an irrigation district such as is commonly designated as an agricultural improvement district, organized and created for the purpose of construction, improving, maintaining and operating certain improvement proj-

ects and works devoted chiefly to the improvement of lands therein for agricultural purposes; and is a taxing agency or instrumentality within the meaning and intent of an act of the Congress of the United States approved August [fol. 7] 16, 1937, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto." Petitioner is entitled to the relief provided by said act and this petition is filed under and pursuant to the provisions thereof and pursuant to a resolution of its Board of Directors duly and regularly passed and adopted at a meeting duly and regularly called and held on the 7th day of September, 1937. The indebtedness of petitioner hereinafter referred to is payable out of assessments and taxes levied against and constituting a lien upon lands within its boundaries.

- 3. Petitioner is insolvent and unable to meet its debts as they mature and desires to effect a plan for the composition of its debts. The debts of petitioner which are affected by the proposed plan of composition hereinafter set forth consist of the outstanding bonds of two issues of bonds duly issued by petitioner under the provisions of said "California Irrigation District Act", and the matured and unpaid interest thereon, which debts are more particularly described as follows:
- (a) Coupon bonds in the principal amount of One Million One Hundred Ninety-two Thousand Bollars (\$1,192,000.00), being all of the outstanding bonds of that certain issue designated as "First Issue" originally in the aggregate principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000.00), bearing interest at the rate of six per cent (6%) per annum, payable on the first day of January and the first day of July of each year, all of said outstanding bonds being dated July 1, 1916, maturing serially from 1933 to 1946, both inclusive, on July first of each year.
- (b) Coupon bonds in the principal amount of Two Hundred Thirty-Five Thousand Dollars (\$235,000.00), being all of the outstanding bonds of that certain issue designated as "Second Issue" originally in the aggregate principal amount of Two Hundred Fifty Thousand Dollars (\$250,-

8

000.00), bearing interest at the rate of six per cent (6%) per annum, payable on the first day of January and the first day of July of each year, all of such outstanding bonds of such second issue being dated October 1, 1918, maturing serially from 1933 to 1948, both inclusive, on October first of each year.

(c) Matured and unpaid interest on the aforesaid bonds amounting approximately to the sum of \$439,085.15 calculated as of October 1st, 1937, and consisting of both the [fol. 8] matured interest coupons appurtenant to said bonds, and the interest provided by law on such bonds and coupons as have matured and have been presented in accordance with the provisions of Section 52 of the "California Irrigation District Act".

The claims of the holders of all said outstanding bonds are payable without preference out of funds derived from the same source and said holders constitute but one class of creditors. No creditors of petitioner other than the holders of said issued and outstanding bonds will be in any way affected by the provisions of the plan of composition and debt readjustment herein referred to and hereinafter set out.

4. A plan for the composition and readjustment of the above mentioned debts of petitioner has been prepared, accepted and approved by petitioner and creditors of petitioner owning not less than fifty-one per cent (51%) in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), to wit, creditors owning approximately eighty-seven per cent (87%) of such securities have in writing accepted said plan and consented to the filing of this petition. Said plan is hereby submitted to said court and is as follows:

Petitioner will pay in cash to each of the holders of the outstanding bonds hereinabove described a sum equal to 59.978 Cents for each Dollar of the principal amount of each such bond, in full payment, discharge and satisfaction of all amounts of principal and interest payable on such bond under the terms thereof or by reason of the presentation of such bond or any appurtenant coupon as provided

by section 52 of the "California Irrigation District Act"; provided that if any coupon or coupons which matured on or prior to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant, then the amount to be paid on such bond shall be reduced in an amount equal to 56.58 Cents for each Dollar of the face amount of such missing coupon or coupons and if any coupon or coupons, which matured subsequent to January 1, [fol. 9] 1934, be not attached to or surrendered with the bond to which it is appurtenant the amount to be paid on such bond shall be reduced by the face amount of such miss-

ing coupon or coupons.

Petitioner proposes to make payment of the amount required by the plan of composition or debt readjustment from the proceeds of a loan which the Reconstruction Finance Corporation, an agency of the United States of America, has authorized and agreed to make to petitioner. To evidence such loan petitioner proposes to issue and deliver to the Reconstruction Finance Corporation its new or refunding serial coupon bonds in an aggregate principal amount equal to the amount borrowed by petitioner in connection with the composition and readjustment of its debts. The new or refunding serial bonds to be issued and delivered by the petitioner to the Reconstruction Finance Corporation will bear interest at the rate of four per cent (4%) per annum, payable semi-annually and petitioner will pay interest on such bonds from the date of delivery. The first instalment of principal will mature three years after date of such bonds and thereafter the remaining principal will mature in instalments annually over a period of thirty (30) years, according to a schedule under which the total amount required to pay both principal and interest in any one year will not exceed the sum of Fifty Thousand Dollars (\$50,-000.00). Petitioner also proposes to pay Reconstruction Finance Corporation four per cent (4%) interest on all amounts advanced from the date of advancement until the new or refunding bonds are issued and delivered to said Corporation.

5. There is annexed hereto marked Exhibit "A" and filed with and made a part of this petition a list of all known creditors of petitioner together with their respective addresses, so far as known to petitioner, and a description of

their respective securities, showing separately those who have accepted the plan of composition, together with their separate addresses. The contents of said list does not constitute admissions by petitioner in this proceeding or otherwise.

[fol. 10] 6. Petitioner was organized on October 25, 1915. to provide for the acquisition or construction of works for the irrigation of lands embraced within its boundaries and to provide for the distribution of water for irrigation and domestic purposes, and said petitioner has been supplying water for such purposes for approximately nineteen (19) years last past. Due to the general financial depression existing throughout the United States during a period which commenced about the year 1930, the price of agricultural products was forced to such a low level that farmers were able to secure for their products no price sufficient to pay the cost of production and the assessments and taxes levied upon their lands. All of the lands within the boundaries of petitioner are agricultural lands and the owners thereof were and are unable to pay their taxes and assessments. Assessments were levied upon the lands within the boundaries of petitioner, as provided by the "California Irrigation District Act", for the purpose of paying bonds and interest coupons but by reason of the inability of the landowners of said petitioner to pay such assessments same have become delinquent and petitioner has been and is unable to collect the same and was compelled to and did make default in payment of interest and principal on its bonds falling due July 1, 1933, and has not been able to and has not paid any interest or principal of said bonds falling due since said 1st day of July, 1933, and that the total amount due upon the debts of said petitioner, described in paragraph 3 of this petition, is the sum of \$756,085.15. The delinquency in the payment of the amount levied as assessments in said District in the year 1932 was approximately forty-seven per cent (47%) of the total amount levied and in order to raise sufficient money to maintain and operate the works of petitioner, petitioner did in the year 1933, and in all years subsequent thereto, apply to and obtain from 'the California District Securities Commission approval of rates of assessment sufficient to raise only such amounts of money as were required for the maintenance and operation

of petitioner's works. If in any year subsequent to 1933 a [fol. 11] sufficient rate of assessment had been levied to provide for the payment of bond interest and principal, delinguent or to mature in the next succeeding year, petitioner would have been unable to realize from such assessment a sufficient amount to maintain and operate its said works. Petitioner has at all times diligently endeavored to collect the assessments levied as aforesaid but for the reasons aforesaid has been unable to do so and on its information and belief alleges that it will be unable to do so. By reason thereof petitioner has been and now is unable to pay any of the interest on its said bonds or any principal thereof naturing since July 1, 1933, and will be unable to pay its ands or the interest thereon as the same are scheduled to riature. Said petitioner is insolvent and for the reasons aforesaid a condition was created and now exists as contemplated by Chapter 10 of said Federal Bankruptcy Act and petitioner desires, and alleges that it is necessary, to effect a plan of composition and readjustment of its debts as hereinbefore set forth.

- 7. The offer of the plan of composition and debt adjustment by the petitioner and its acceptance by the said consenting creditors are in good faith and said plan of composition is fair, equitable and for the best interests of the creditors and does not discriminate unfairly in favor of any class of creditors. Petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the plan.
- 8. The plan of composition and debt readjustment proposed herein contemplates that petitioner shall operate, protect, preserve and maintain, in the usual and customary manner, its system of irrigation works and that petitioner shall pay, and petitioner should be permitted to pay, the reasonable cost of maintaining, protecting, preserving and operating its works during the pendency of this proceeding, together with the necessary court costs and a reasonable fee to counsel for petitioner, the amount thereof to be approved by the court.

reservad especial established as some contraction described the reservation of the second sections of the second sections and the second sections of the second sections of the second section of the secti

# [fol. 12] Wherefore, petitioner prays:

- 1. That this court make its order approving this petition as properly filed in good faith under the provisions of said Chapter 10 of said National Bankruptcy Act.
- 2. That upon the filing of this petition the court make and enter an order, fixing the time and place for a hearing on the petition and providing that notice be given to creditors as provided by law.
- 3. That an order be made and entered herein enjoining and staying, pending the determination of the matter, the commencement or continuation of suits against petitioner or any officer or inhibitant thereof, on account of the securities affected by the plan, or the commencement or continuation of any suit, process or proceeding to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under such securities or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any tax or assessment lien.
- 4. That upon the completion of the hearing of the plan an interlocutory decree be entered approving and confirming the plan and putting it into effect.
- 5. That upon completion of the plan of composition and debt readjustment a final decree be entered discharging petitioner from all debts and liabilities in accordance with the plan.
- 6. That the court allow and give such other hearings and make such orders, decrees, confirmations and finally determinations as may be proper and necessary in the premises.

Lindsay-Strathmore Trrigation District, by Ernest L. Daniells, Its President.

Attest: H. R. Huebert, Its Secretary. James R. McBride, Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, Attorneys for Petitioner.

gk:m.

[fol. 13] Duly sworn to by Ernest L. Daniells. Jurat omitted in printing.

# [fol. 14] EXHIBIT "A" TO PETEL ON

Being a list of all known creditors of the petitioner, together with their respective addresses so far as known to petitioner, and description of their respective securities and showing separately in Part One thereof, those who have accepted the plan, together with their separate addresses, and in Part Two all other creditors with their respective addresses.

#### Part One.

### Creditors who have accepted the plan:

Name and Residence	Description
Reconstruction Finance Corporation	Bonds of both issues in the aggregate prin-
Drainage, Levee and Irrigation Division	cipal amount of \$1,242,500.00 on which bonds appurtenant coupons in the
Hill Building,	aggregate face amount of approximately
Washington, D. C., and	\$304,710.00 have matured and on which bonds and coupons additional interest
Wm. J. Burns, Trustee	after presentment at maturity and in the
32 Central Avenue,	aggregate amount of approximately
Phoenix, Arisona.	\$74,089.39 has accrued to September 1,
	1937 under the provisions of Section 52
	of the California Irrigation District Act.
	Total claim, approximately—\$1,621,299.39.

#### Part Two

#### All Other Creditors:

-				
- 30			-4	ion
	ne solu	-	THE.	26.27

			2 dadispate	-	46
Name and Residence	Number and Issue of Bond	Prin.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	Total Claim
J. R. Mason, 1920 Lake St., San Francisco,			Coupon	0.1.2.11	8
California		\$500	\$120.00	\$16.14	
· Cut a delivery weared make	2-263	500	120.00	16.14	
	1-433	1,000	120.00	176.14	100
[fol. 15]	1-495	\$500	120.00	88.07	
a arriver on self-	1-496	500	60.00	88.07	
	1-497	500	60:00	88.07	
	1-578	500	90.00	56.09	
	1-1737	500	120.00	16.13	
	1-1738	500	120.00	16.13	
- Administration of the state o	1-621	500	90.00	56.09	
And the same of th	1-869	1,000	240.00	32.28	
	1-870	1,000	240.00	32.28	
	1-882	1,000	240.00	32,28	
	1-941	500	120.00	16.14	The state of
0/	1-042	500	120.00	16.14	
	1-981	1,000	240.00	32.28.	W. S. S. S.
0	1-982	1,000	240.00	32.28	
The Name of Street,	1-1235	1,000	240.00	32.28	
and a street of white	1-1236	1,000	240.00	32.28	
e-	1-1257	1,000	240:00	32.28	of a cont
0:	1-1283	500	120.00	16.14	
	1-1286	500	120.00	16.14	

F7		- 4.9	
Des	22	pu	on

Name and Residence	Number and Issue of Bond	Prin.	Interest Per , Coupon	Interest Per Sec. 52 C. I. D. A.	Total Claim
	1-1892	500	120.00	16.14	Canada
	1-1327	500	120.00	16.14	
	1-1228	1,000	120.00	32.28	
	1-1677	1,000	240.00	32.28	
	1-1785	500	120.00 120.00	16.14 16.14	
	1-1878	1,000	240.00	32.28	
	1-1889	1,000	240.00	32.28 32.28	
	1-1891	1,000	240.00	32.28	
	1-1972 1-1995	500	120.00	16.14	
(fal 18)	1-1996	-500	120.00	16.14	
[fol. 16]	1-1997 1-1998	500	120.00	16.14	
	1-1999	500	120.00	16.14	
	1-2000 1-2097	500	120.00 120.00	16.14 16.14	
4	1-2098	500	120.00	16.14	
	1-1676 1-1803	1,000	240.00 120.00	32.28 16.14	
	190 1175	30,000	6,900.00		
Total Claim		30,000	0,900.00	1,407.80	38,307.98
Milo W. Bekins and	90.00	1000			
Reed J. Bekins, sep-		. 14	255		. 1
arately and individu- ally, and as trustees,	COP INCH		(0)(0)		
c/o Bekins Van &			100		
Storage Co., 190 Otia St., San Francisco,	WELLTH.	- ne	19841		
Calif	1-354	1,000	90.00	238.54	
2 / .	1-355 1-356	1,000	90.00	238.54 238.54	
	1-385	500	45.00	119.28	
	1-386 1-887	500	45.00	119.28 119.28	
	1-388	500	45,00	119.28	-
Contract of	1-410	500	45.00	119.28 119.28	1
	1-412	500	45.00	119.28	
	1-418	500	45.00	119.28 119.28	
15.44	1-415	500	45.00	119.28	
. (25 13)	1-415	500	45.00	119.28 119.28	
	1-418	500 500	45.00	119.28	
	1-419	500	45.00	119.28 119.28	1 7 4
1 19 19 19 19 19 19 19 19 19 19 19 19 19	1-439	1,000	150.00	184.71	
[fol. 17]	1-440	1,000	150.00	184.71 184.71	
lior. 171	1-454	1,000	150.00 150.00 150.00	184.71	
11.04	1-455	1,000	150.00	184.71	
20,05	14000		75.00	92.36	

## Part Two-Continued.

The		-9	_	4.2	_	_
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	- Downspans				
Name and Residence	Number and Issue of Bond	Prin. Amt.	Interest Per Coupon	Interest Per Sec. 52 C. I. D. A.	Total Claim
	1-481	500	75.00	92.36	
	1-482	500 500	75.00	92.36	
	1-499	500	75.00	92.36	
	1-508	500	75.00	92.36	
	1-509	500	75.00	92.36	
	1-514 1-515	500	75.00 75.00	92.36 92.36	
	1-516	500	75.00	92.36	
	1-517	500	75.00	92.36	*
in the state of th	1-518	500 500	75.00 75.00	92.36 92.36	
4 4 1 1 1 1 1	1-520	500	75:00	92.36	
	1-521	500	75.00	92.36	
	1-522 1-523	500 500	75.00	92.36	
	1-524	500	75.00	92.36 92.36	
W-1	1-525	500	75.00	92.36	
	1-526	1,000	210.00	120.75	
	1-532 1-540	1,000	210.00 210.00	120.75 120.75	2
	1-541	1,000	210.00	120.75	
	1-545	1,000	210.00	120.75	
	1-546	1,000	210.00 210.00	120.75	
	1-559	1,000	210.00	120.75 120.75	
	1-560	1,000	210.00	120.75	4
[fol. 18]	1-577	500 500	105.00	60.38	
[iot. 18]	1-585. 1-596	500	105.00 105.00	60.38	
	1-587	500	105.00	60.38	
	1-588	500	105.00	60.38	
-1	1-589 1-590	500	105.00	60.38	
100	1-591	500	105.00	60.88	
- 10.10	1-592	500	105.00	60.38	
· Company	1-647	1,000	270.00 270.00	52.51 47.86	
• 177	1-649	1.000	270.00	47.36	- *
25.61L	1-650	1,000	270.00	47.36	
	1-676 1-677	500 500	135.00	26.25 26.25	
100	1-682	500	135.00 135.00	26.25	2
10 10	1-683	500	135.00	26.25	
- 101 to	1-686	500	135.00	26.25	
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1-687	500	135.00 135.00	26.25 26.25	
	1-689	500	135.00	26.25	
	1-690	500	135.00 135.00	26.25	
as bit	1-691	500	135.00	26.25	
79, 411.	1-606 1-607	500	135.00 135.00	26.25 26.25	
11.181	1-698	500	185.00	26.25	
17.482	1-749	1,000	270.00	40.86	4.5
17.387	1-750	1,000	270.00	40,94	
1 17 181	1-752	1,000	270.00 270.00	40.94	84 1
88.38	1-781	500	125.00	20.43	

Part Two-Continued.

D	_	_	9.	_ 4	18		
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			Descriptio	n.	
Name and Residence [fol. 19]	Number and Issue of Bond 1-782 1-783 1-786 1-787 1-788 1-817		Interest Per Coupon 135.00 135.00 135.00 135.00 135.00 135.00	Interest	Total Claim
	1-818 1-819 1-820 1-821 1-840 1-936 1-995 1-996	500 500 500 500 500 500 1,000 1,000	135.00 135.00 135.00 135.00 135.00 135.00 270.00 270.00 270.00	20.43 20.43 20.43 20.43 20.43 20.43 40.94 40.94	
	1-1238 1-1290 1-1291 1-1292 1-1401 1-1402 1-1416 1-1417 1-1418	1,000 500 500 500 500 500 500 500	270.00 135.00 185.00 185.00 185.00 185.00 185.00 185.00 185.00	40.94 20.43 20.43 20.43 20.43 20.43 20.43 20.43 20.43	
on etc.	1-1419 1-1420 1-1942 1-1943 1-1944 1-1945 1-1946 1-264	500 500 1,000 1,000 1,000 1,000 1,000	135.00 135.00 270.00 270.00 270.00 270.00 270.00 30.00	20.43 20.48 40.94 40.94 40.94 40.94 275.17	
[fol. 20]	1-264 1-265 1-266 1-272 1-278 1-274 1-305 1-307	1,000 1,000 1,000 1,000 1,000 1,000 500 500	30.90 30.00 30.00 30.00 30.00 15.00 15.00	275.17 275.17 275.17 275.17 275.17 275.17 137.58 137.58	
Total Claim	1-333 1-334 1-335 1-336	500 500 500 500 884,000	15.00 15.00 15.00 15.00 15.720.00	137.58 137.58 137.58 137.58	\$12.AU
Wells Fargo Bank & U. T. Co., Market at Montgomery, San Francisco, Calif	00.404 00.464 00.484 79.864 1-822	500	185.00	20.84	0,900.20
10.40 218 20 204.1	1-034 1-035 1-1511 1-719	500 500 1,000 500	135.00 135.00 270.00 185.00	20.34 20.34 40.68 26.17	a latest
Total claim	T - 400	\$3,000	810.00	127.87	3.987.87

18,750,63

## Part Two-Continued.

# Description

Name and Residence	Number and Issue of Bond	Prin.	Per Coupon	Interest Per Sec. 52 C. I. D. A.	Total Claim
David F. Selby, 373	4 4 5 1		" " Ju.	-	
13th St., Oakland Calif	1-562	500	105.00	. 58.78	
. 6-11	1-563	500	105.00	58.78	
	S.F	\$1,000	210.00	117.56	
Total claim					\$1,327.56
fol. 21]	10.43	1965 A	626.7	-	*
P. P. V. J.	- W1 155		115-4		
Walter J. Selby, 116 Greenwich St., San	1	1000			
Francisco, Calif	. 1-1873	. 1,000	270.00	39.42	
10.75	1-1874	1,000	270.00	39.42 39.42	
	a 137,000		0/00-		
Total claim	49,841	\$3,000	810.00	118.06	\$3,928.0
G- 43					
for Eva A. Parring			1		
ton Trust, 204 Lorin	g .		200		
Bl., Riverside, Calif.	. 1-1851	500	120.00	16.09	
10000000000000000000000000000000000000	1-1852	500	120.00	16.09	-
m.4.1 4.4	130-77	\$1,000			
Total claim					\$1,272.1
ames H. Jordan, 200	0	1/900,1	Q		
Loring Bl., Riverside Calif	1-408	500	80.00	118.00	
1 1 20 200	1-409	° 500	30.00	118.00	
	1-513	500	60.00	158.09 158.09	0 1
	1-534	1,000	180.00	112.20	- 1
11.419	1-535	1,000	180.00	112.20	
9	1-659 1-836	1,000	240.00 120.00	43.96 16.12	
24.78	1-553	1,000	210.00	120.71	
10,10	1-1524	1,000	240,00	32.27	
2 2 2 7 7	1-406	500	30.00	117.21 117.21	
85,561	1-510	500	.60.00	88.05	
ol. 22]	1-511	500	80.00	88.05	
70.167	1-561	500	90.00	56.07 56.07	
0.0000	1-614	500	105.00	60.31	
	1-615	500	105.00	60.43	
E Mr. Alle				00.90	
The state of the s	1-616	500		23.92	er V I
T. Mily.		500 500	120.00 135.00	28.92	A FOR
	1-616 1-722	500 500 500	120.00 185.00 185.00	26.20 26.20	in Fara Almagan
44 FB	1-616 1-722 1-733	500 500	120.00 135.00	26.20	er i de la
	1-616 1-722 1-733	500 500 500	120.00 135.00 135.00 240.00	26.20 26.20 32.25 1,802.04	\$18,957¢0

# Part Two-Continued.

# Description

		Donotipato		
Number and lisue of Bond	Prin.	Interest Per Cormon	Interest Per Sec. 52	Total Claim
11011	W(1)	1281-1	C.L.D.A.	CIMITI
2-44	1,000	165.00	168.89	9 .
2-46	1,000	165.00	168,89	
2-48	500	82.50	83.12	
2-50 2-51	500	82.50	83.12	
2-52 2-53	500 500	82.50 82.50	83.12 83.12	1
2-54 2-55	500 500	82.50 82.50	83.12 83.12	to delay it.
2-57	500	82.50	83.12	
2-62	1,000	225.00	103.91	,
2-64 2-65	500	112.50	51.95	-
2-67	500 500	112.50 112.50	51.95 51.95	17.0
2-203	1,000	270.00	40.55	10
2-270 2-271	1,000	270.00	40.55	
+4X (457		324	2,208.76	Algorith
			\$	24,533.7
· Name ·				
1-1250 1-1310	1,600	240.00	41.63 15.61	
1-1312	500	120.00	15.61 15.61	
1-1314	500	120.00	15.61	
1-1316 1-1317	500	120.00	15.61	
1-1373 1-1874	1,000	240.00 240.00	31.23 31.23	
1_1975	1 000	240.00	31.32	Ster
1-1376	1.000	240.00	31.23	
1-1376 1-1377 1-1378	1,000 1,000 1,000	240.00 240.00 240.00	31.23 31.23 31.23	
1-1376 1-1377 1-1378 1-1448 1-1449	1,000 1,000 1,000 500 500	240.00 240.00 240.00 120.00	31.23 31.23 31.23 15.61 15.61	
1-1376 1-1377 1-1378 1-1448	1,000 1,000 1,000 500	240.00 240.00 240.00 120.00	31.23 31.23 31.23 15.61	
	and lisus of Bond  2-44 2-45 2-45 2-46 2-47 2-48 2-49 2-51 2-52 2-53 2-54 2-56 2-57 2-61 2-62 2-63 2-64 2-66 2-67 2-202 2-203 2-266 2-270 2-271  1-1250 1-1311 1-1311 1-1313 1-1314 1-1315 1-1316 1-1317 1-1373 1-1374	and lisus of Bond Amt.  2-44 1,000 2-45 1,000 2-45 1,000 2-46 1,000 2-48 500 2-49 500 2-50 500 2-51 500 2-52 500 2-53 500 2-54 500 2-55 500 2-56 500 2-56 500 2-66 500 2-67 500 2-68 500 2-68 500 2-202 1,000 2-203 1,000 2-203 1,000 2-270 1,000 2-271 1,000 318,500 \$  1-1310 500 1-1311 500 1-1312 500 1-1314 500 1-1315 500 1-1317 500 1-1317 500 1-1317 500 1-1317 500 1-1317 500 1-1317 500	Number and lissue of Bond Amt. Prin. Per Coupon  2-44 1,000 165.00 2-45 1,000 165.00 2-46 1,000 165.00 2-47 1,000 165.00 2-48 500 82.50 2-49 500 82.50 2-50 500 82.50 2-51 500 82.50 2-52 500 82.50 2-53 500 82.50 2-54 500 82.50 2-54 500 82.50 2-54 500 82.50 2-55 500 82.50 2-56 500 82.50 2-57 500 82.50 2-67 500 12.50 2-68 500 112.50 2-68 500 112.50 2-68 500 112.50 2-2-202 1,000 225.00 2-2-203 1,000 270.00 2-2-203 1,000 270.00 2-2-270 1,000 270.00 2-2-271 1,000 270.00 2-271 1,000 270.00 2-271 1,000 270.00 2-271 1,000 270.00 2-271 1,000 270.00 2-1313 500 120.00 1-1314 500 120.00 1-1315 500 120.00 1-1315 500 120.00 1-1316 500 120.00 1-1317 500 120.00 1-1317 500 120.00 1-1373 1,000 240.00 1-1373 1,000 240.00 1-1374 1,000 240.00 1-1377 1,000 240.00	Number and lisus of Bond   Amt.   Per   Per Sec. 52

#### Part Two-Continued.

#### Description

Name and Residence	Number and Issue of Bond	Prin. Amt.	Interest Per Coupon	Interest Per Sec. 5 C. I. D. A.	
	1-1521 1-1522 1-1595	1,000 1,000 500	240.00 240.00 120.00	31.23 31.23 15.61	
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	1-1596 1-1597 1-1598	500 500 500	120.00 120.00 120.00	15.61 15.61 15.61	
18.1051 51.45	1-1599 1-1600	500	120.00 120.00	15.61	
Total claim,		\$20,000	\$4,800.00	\$634.89	\$25,434.89
C. A. Moss, 532 N. Highland Ave., Los	10.11				
Angeles, Calif	1-1872 1-1423	1,000 500 500	240.00 120.00 120.00	32.30 16.16 16.16	
	1-1423 1-1925 1-1926	1,000	240.00 240.00	32.30 32.30	
100	1-1927 1-1928	1,000	240.00 240.00	32.30 32.30	
Total claim	0	\$6,000	\$1,440.00	\$193.82	\$7,633.82
[fol. 25]	0.00	11 (381)			
Unknown	1-636 1-537 1-538 1-735	1,000 1,000 1,000 500	210.00 210.00 210.00 150.00	120.75 120.75 120.75	
Total claim		\$3,500	\$780.00	\$362.25	\$4,642.25

Lynn Atkinson c/o Call and Murphy Attorneys at Law 514 Pacific Mutual Bldg. Los Angeles, Calif.,

This creditor holds matured coupons aggregating \$1,065 in face amount and on which interest under Section 52 in the sum of \$298.20 accumulated to July 1, 1937. Of the coupons, those aggregating \$795.00 in face amount are appurtenant to bonds held by creditors who have accepted the plan and the remainder are appurtenant to bonds held by those creditors who have not accepted the plan.

Total slaim \$1,362.20

Total claim \$1,863.20.

[File endorsement omitted.]

0 14.107 10,151

23.50

#### No. 4575

### [Title omitted]

OBDER APPROVING PETITION AND POR NOTICE TO CREDITORS—Filed September 21, 1937

Lindsay-Strathmore Irrigation District, having filed in this court its duly verified petition in the above entitled matter, which said petition sets forth a plan for composition and readjustment of its debts under Sections 81, 82 and 83 of Chapter 10 of the National Bankruptcy Law as amended, and to which said petition there is attached a list of all known creditors of the petitioner, together with their addresses so far as known to the petitioner and the description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, and the court having examined said petition and plan of composition and readjustment set forth therein, and having heard the oral testimony offered in support thereof, and being fully advised in the premises, finds, that the petition and plan for composition and debt readjustment set forth therein are presented in good faith and for the bona fide purpose of obtaining the relief therein prayed for, and that creditors of the petitioner owning not less than fifty-one per cent (51%) in amount of the securities affected by the plan, to wit, creditors owning approximately eighty-seven per cent (87%) of such securities, have in writing accepted said plan and consented to the filing of said petition, and that the petition and plan are in conformity with sections 81, 82 and 83 of Chapter 10 of the [fol. 27] National Bankruptcy Law as amended, and should be approved as properly filed.

It is Therefore Ordered, Adjudged and Decreed, that the said petition of Lindsay-Strathmore Irrigation District is hereby approved as properly filed under the provisions of said Chapter 10 of the National Bankruptcy Law as amended; that said petition complies with said Chapter 10 of said National Bankruptcy Law as amended and has been

filed in good faith.

It is Further Ordered that the Post Office Building in the the City of Fresno, State of California, and Friday, the 3rd day of December, 1937, at the hour of 10 o'clock A. M. be

and the same are hereby fixed as the time and place for a hearing on said petition; and the Clerk of this court is hereby directed to give notice to creditors of the petitioner of the filing of the petition and its approval by this court as having been properly filed and of the time and place of hearing, and the court hereby prescribes the following as the form of notice to be given, to wit:

# "Notice to Creditors

To the Creditors of Lindsay-Strathmore Irrigation District:

Notice is hereby given, that on the — day of September. 1937, the verified petition of Lindsay-Strathmore Irrigation District was duly filed in the office of the Clerk of the District Court of the United States in and for the Southern District of California, stating among other things that the District is insolvent and unable to meet its debts as they mature and that it desires to effect a composition and plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Sections 81, 82, and 83 of Chapter 10 of the National Bankruptcy Law as Amended, and praying that the court take such other action under the Act mentioned as is necessary to fully effect such debt composition and readjustment. That the petition of said Lindsay-Strathmore Irrigation District and the proceedings for composition and readjustment of its debts as set forth therein have been approved by the court as properly filed under said Chapter 10 of said National Bankruptcy Law as Amended, and is now pending therein; that by order of the court duly entered in said proceedings, -, the - day of \_\_\_\_, 1937, at the hour of \_\_ o'clock \_\_. M. of said day, and the Post Office Building, in the City of Fresno, State of California have been fixed as the time and place where, and at which said time and place, a hearing will be held for [fol. 28] the purpose of considering the plan of composition and debt readjustment as set forth in said petition, as well as any changes or modifications thereof which may be proposed or decreed to be necessary or proper and for the further purpose of hearing any ereditor of the District upon any controvertible matter in connection with the proposed composition and plan of debt readjustment, and the advisability of entering an order confirming the same.

The plan of debt readjustment materially affects the holders of all of the outstanding bonded indebtedness of the District and of any claims for interest appertaining thereto as it will, if put into effect, require the holders of such indebtedness to surrender the same and receive in exchange therefor the amount in cash provided for in the plan, that is to say, a sum equal to the sum of \$.59978 for each dollar of the principal amount of each such bond, in full payment, discharge and satisfaction of all amounts of principal and interest payable on such bond under the terms thereof or by reason of the presentation of such bond or any appurtenant coupon as provided by section 52 of the 'California Irrigation District Act'; provided that if any coupon or coupons which matured on or prior to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant, then the amount to be paid on such bond shall be reduced in an amount equal to 56.58 cents for each Dollar of the face amount of such missing coupon or coupons and if any coupon or coupons, which matured subsequent to January 1, 1934, be not attached to or surrendered with the bond to which it is appurtenant the amount to be paid on such bond shall be reduced by the face. amount of such missing coupon or coupons.

Any creditor of petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection that he may have to the plan of composition, at any time at least ten (10) days before the date fixed for said hearing. All creditors may be heard on the acceptance or rejection of the plan for composition and debt readjustment at the hearing, and are required to make proof and evidence of their claims by filing a verified statement thereof with the Clerk of this court on or before the above mentioned date fixed for hearing.

Creditors of the District are hereby referred to the petition on file in the above entitled proceeding and to the exhibits attached thereto and the order of the Court for details and particulars of the proposed plan of composition and debt readjustment, and of the proceedings taken and to be taken herein.

Dated — — , 1937.
— — , Clerk of the United States District Court."

[fol. 29] It is Further Ordered, that the notice above set forth be published once a week for at least three (3) successive weeks in the Visalia Times-Delta, a newspaper of general circulation, published at Visalia, California, and within the jurisdiction of the court, and also be published at least once a week for three (3) successive weeks in — Los Angeles Daily Journal a newspaper published in the City of Los Angeles, State of California, a newspaper of general circulation, which is hereby designated as a newspaper having a general circulation among bond dealers and bond holders, and that no other or further publication of said notice shall be required.

It is Further Ordered, that a copy of said notice be mailed, postage prepaid, to each creditor of petitioner named in the petition, at the addresses of such creditors given in the petition, it appearing that the addresses of all the known creditors of the petitioner are set forth in the petition.

It is Further Ordered that the first publication of said notice shall be made and the mailing of copies thereof as herein ordered shall be completed at least sixty (60) days before the date fixed for the hearing.

It is Further Ordered and Adjudged, that at the hearing upon the petition held at the time and place herein and in the said notice to creditors set forth, any creditor may be heard upon the acceptance or rejection of the plan as proposed by the petition and that at any time not less than ten (10) days prior to the time fixed for hearing, may file an answer to the hearing controverting any of the material allegations therein and setting upon any objection he may have to the plan of composition and debt readjustment.

Dated September 21, 1937.

Leon R. Yankwich, Judge.

gk:m. 9/21/37.

[File endorsement omitted.]

### No. 4575

## [Title omitted]

ORDER TO SHOW CAUSE WHY INJUNCTION SHOULD NOT ISSUE AND WHY INTERLOCUTORY DECREE MAKING PLAN TEMPORABILY OPERATIVE SHOULD NOT BE ENTERED—Filed September 22, 1937

To the Creditors of the Lindsay-Strathmore Irrigation District, Petitioner in the Above Entitled Cause:

You and Each of You Are Hereby Notified that the Lindsay-Strathmore Irrigation District has filed in the above entitled court and proceeding its duly verified petition alleging that it is insolvent and unable to pay its debts as they mature and that it desires to affect a plan for the composition and readjustment of its debts under the provisions of Chapter 10 of the National Bankruptcy Act as amended and that an order has been made and entered therein finding that said petition has been filed in good faith and approving said petition as properly filed and fixing a time and place for the hearing thereon, and good cause appearing to the court,

It is Hereby Ordered that you and each of you show cause, if any you have, upon Monday, the 11th day of October, 1937, at the court room of the above entitled court at the Post Office Building in the City of Fresno, State of California, at the hour of 2:00 o'clock P. M. of said day, or as soon thereafter as counsel may be heard, why an order should not be made and entered herein enjoining and staying, pending the determination of said matter, the commencement or continuation of suits, actions or proceedings against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan as set forth [fol. 31] in said petition or to enforce any lien or to enforce. the levy of taxes or assessments for the payment of obligations under such securities; and to also show cause, if any you have, why an interlocutory decree should not be entered herein ordering that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of principal or interest, or both, of or on account of such securities shall be temporarily postponed or extended or otherwise adjusted in the same manner and

upon the same terms as if such plan had been finally con-

firmed and put into effect.

It is Further Ordered that notice of the issuance of this order to show cause and of the time and place fixed for hearing the same be given to the creditors of said petitioner by mailing a copy of this order to show cause, postage prepaid, to each creditor of the petitioner named in the petition, at the address of such creditor given in the petition, not less than ten days prior to the date fixed for the hearing of said order to show cause.

It is further ordered that pending the hearing of this order to show cause the creditors of said petitioner, and their agents or attorneys, and each of them, be and he is hereby enjoined and restrained from commencing or continuing any suit, action or proceeding against the petitioner or any officer or inhabitant thereof, on account of the securities affected by the said plan of composition and debt readjustment, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of any obligation under such securities.

Dated September 22nd, 1937.

Leon R. Yankwich, District Judge.

gk:m. 9/21/37.

[File endorsement omitted.]

[fol. 32] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

Notice of Motion to Dismiss Petition—Filed October 2, 1937

To Lindsay-Strathmore Irrigation District, Petitioner, and to James R. McBride and Mitchell, Silberberg, Roth & Knupp, Its Attorneys:

You and each of you will please take notice that on Monday the 11th day of October, at the hour of 2 o'clock p. m. of that day, in the court room of the above entitled court, in the Post Office Building in Fresno, California, respondents

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington trust, and C. A. Moss, will move the above entitled court for an order dismissing the petition herein upon the grounds set forth in the annexed copy of motion, which will then be made. Reference will be made to the files, records and pleadings in said cause and to the annexed memorandum of points and authorities.

Dated September 30th, 1937.

W. Coburn Cook, Attorney for Milo W. Bekins, et al., Respondents.

[fol. 33] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

MOTION TO DISMISS-Filed October 2, 1937

Come now Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington trust, and C. A. Moss, and file their motion to dismiss the petitioner's petition filed herein, and as grounds for said motion state:

1

Allege that they own bonds of the Lindsay-Strathmore Irrigation District, petitioner, as set forth in petitioner's petition, in the following principal amounts, some of which is past due, with past due interest, as stated therein:

Milo W. Bekins and Reed J. Bekins, as trustees appointed

by the will of Martin Bekins, deceased, \$72,500.00;

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, \$14,500.00;

J. R. Mason, \$30,000.00; James Irvine, \$18,500.00; A. Heber Winder, trustee for Eva A. Parrington trust, \$1000.00;

C. A. Moss, \$6000.00.

#### II

That this court is without jurisdiction of the subject matter of the proceeding.

### Ш

That said petition does not state facts sufficient to consti-[fol. 34] tute a good and sufficient petition under Chapter 10 of the Bankruptcy Act of 1898, nor does it appear therefrom that the petitioner irrigation district is a bankrupt within the terms of Sections 81 to 84, inclusive, of the Bankruptcy Act of 1898.

#### IV

That this court is without jurisdiction to entertain the petitioner's petition and the plan of readjustment filed therewith or to hear or determine this cause because this proceeding and the bankruptcy act under which this proceeding is brought, being Public No. 302, approved August 16th, 1937, is unconstitutional and void and affects the property rights of these respondents for the following reasons, to-wit:

- 1. Under Section 8, Article I of the Constitution of the United States, Congress has power to pass uniform laws on the subject of bankruptcy throughout the United States, and said Act is not a uniform law on the subject of bankruptcy throughout the United States.
- 2. That under said act private property may be taken for public use without just compensation, contrary to the provisions of Amendment V of the Constitution of the United States, and the petitioner's petition and the plan of readjustment filed therewith propose to take respondents' property without just compensation.
- 3. That under the Constitution of the United States and the plan of government set forth therein, the Federal Government is a government of delegated powers, and no power has been delegated to Congress to pass legislation such as said Act of Congress, being Sections 81 to 84 inclusive, of the

Bankruptcy Act of 1898, regulating the rights of citizens, and particularly these respondents, against the states or state governmental agencies in the manner therein provided.

- 4. That said act was passed in violation of the reserved rights of states of the United States as guaranteed to the [fol. 35] states by Article X of the Federal Constitution, and because the passage of said act is a violation of the rights of citizens, and particularly these respondents, guaranteed and reserved to them by Amendment X to the Constitution.
- 5. Said act attempts to subject state governmental agencies to the jurisdiction of federal courts contrary to the plan and scheme of government, as set out in the Constitution of the United States.
- 6. Said act in other respects violates the Constitution of the United States.

#### V

That petitioner herein, Lindsay-Strathmore Irrigation District, is without legal capacity to make its said petition, and that its proceeding under said petition is in violation of Article I, Section 16 of the Constitution of the State of California, Article I, Section 21 of said Constitution, Article XIII, Section 6 of said Constitution, Article IV, Section 1 of said Constitution.

Wherefore, respondents pray that the petition of the Lindsay-Strathmore Irrigation District be dismissed.

Dated September 30th, 1937.

Reed J. Bekins, et al., Respondents.

W. Coburn Cook, Attorney for Milo W. Bekins and

[fol. 36] IN UNITED STATES DISTRICT COURT No. 4575

APPIDAVIT OF SERVICE BY MAIL-Filed October 2, 1937

STATE OF CALIFORNIA, County of Stanislaus, ss:

Jeanette Ofelth, being first duly sworn, says:
That she is a citizen of the United States; that she resides
in the City of Turlock, County of Stanislaus, State of Cali-

fornia, in the county in which the mailing hereafter referred to took place; that she is over the age of 18 years and not interested in the above entitled matter; that on the 30th day of September, 1937, she placed a full, true and correct copy of the annexed Notice of Motion to Dismiss Petition, Motion to Dismiss, and Memorandum of Points and Authorities in each of two envelopes, duly sealed, and deposited the same in the United States Post Office at Turlock, California, with postage thereon fully prepaid, addressed to

Mr. James R. McBride, Attorney at Law, Lindsay, California:

Mitchell, Silberberg, Roth & Knupp, Attorneys at Law, 603 Roosevelt Building, Los Angeles, California.

That said James R. McBride and Mitchell, Silberberg, Roth & Knupp are attorneys of record for the above named Lindsay-Strathmore Irrigation District. That there is regular daily communication by mail between Lindsay, California and Turlock, California, and between Los Angeles and Turlock, California.

Jeanette Ofelth.

Subscribed and sworn to before me this 30th day of September, 1937. Gilbert Moody, Notary Public in and for the County of Stanislaus, State of California. (Seal.)

[File endorsement omitted.]

[fol. 37] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

Morion to Dismiss-Filed October 11, 1937

Now comes James H. Jordan and states that he is a creditor of the above entitled irrigation district, owning bonds of said district in the sum of \$13,500.00, as described in the petition herein, together with past due coupons and interest, as therein described, and he joins in the motion of Milo W. Bekins, et al., for dismissal, and moves this Honorable Court

to grant said motion and to dismiss the proceedings herein upon all of the grounds set forth in the notice of motion and motion of said Milo W. Bekins, et al. herein.

W. Coburn Cook, Attorney for James H. Jordan.

Service and receipt of copy of the foregoing Motion to Dismiss admitted this 11th day of October, 1937, and notice thereof is waived.

Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, James B. McBride, Attorneys for Lindsay-Strathmore Irrigation District.

-[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

No. 4575

# [Title omitted]

RETURN OF CERTAIN CREDITORS SHOWING CAUSE WHY AN IN-JUNCTION SHOULD NOT ISSUE AND WHY AN INTERLOCUTORY DECREE MAKING PLAN TEMPORABILY OPERATIVE SHOULD NOT BE ENTERED—Filed October 11, 1937

Come now Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, Trustee for Eva A. Parrington trust, and C. A. Moss, and by way of return to the order to show cause issued herein September 22, 1937, setting the time for showing cause at 2 p. m. Monday the 11th day of October, 1937, at the court room of this court, in the Post Office Building in the City of Fresno, State of California, said creditors show cause why an injunction should not issue as prayed for and why an interlocutory decree making the plan temporarily operative should not be entered, and in this connection allege:

I

That they are creditors of Lindsay-Strathmore Irrigation District and are the owners and holders respectively of the bonds stated in the petition, together with the unpaid interest coupons and interest as therein stated, and that some of the bonds described are past due, and that all of the past due bonds and interest coupons have been presented to the treasurer of the Lindsay-Strathmore Irrigation District in accordance with the provisions of Section 52 of the California Irrigation District Act, and payment [fol. 39] thereof has been refused, and that none of these respondents have been notified that funds are available for payment thereof, and that the amount past due and unpaid upon the principal of said bonds is the sum of approximately \$142,500.00, and the amount of interest coupons unpaid and past due is approximately the sum of \$28,125.00;

That these respondents are severally the owners of bonds of said district, described as aforesaid, in the following

principal amounts, to-wit:

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, \$72,500.00;

Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, \$14,500.00;

J. R. Mason, \$30,000.00; James Irvine, \$18,500.00;

A. Heber Winder, trustee for Eva A. Parrington Trust, \$1000.00;

C. A. Moss, \$6000.00:

that these respondents own in the aggregate more than 75% of all of the outstanding bonds of the Lindsay-Strathmore Irrigation District, except as to those which it is stated in the petition are owned by the Reconstruction Finance Corporation, and as to the bonds stated in the petition to be owned by the Reconstruction Finance Corporation these respondents allege that the same are fully paid and no longer outstanding; and in this regard said respondents further state that the acquiring of bonds or other evidence of indebtedness of the Lindsay-Strathmore Irrigation District by the Reconstruction Finance Corporation is not authorized by law, or otherwise, than in accordance with Title 43, Section 403, U. S. Code.

That certain actions have been heretofore commenced and were commenced prior to the institution of these proceedings by certain of these respondents and the said causes [fol. 40] are pending in the Superior Court of the State of California, in and for the County of Tulare, to-wit:

An action entitled "Milo W. Bekins and Reed J. Bekins as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, Plaintiffs, vs. Lindsay-Strathmore Irrigation District, Defendant", No. 26805:

An action entitled "James Irvine, Plaintiff, vs. Lindsay-Strathmore Irrigation District, Defendant", No. 26778;

An action entitled \*C. A. Moss, Plaintiff, vs. Lindsay-Strathmore Irrigation District, Defendant", No. 26693;

and that in the first of said causes the complaint was in the form hereunto annexed marked Exhibit A, and made a part hereof by this reference, and that the complaints in each of the other said causes was and is in substantially the same form; that summons have been issued out of each of said causes and served upon the defendant district and that the district has in each of said causes demurred thereto and the demurrers have been presented to the court and submitted to the court for its decision; that said causes of action have their objective, as shown by the pleadings, the staying of the statute of limitations, and the adjudging of the indebtedness due the several plaintiffs therein.

### II

That prior to the commencement of these proceedings the said respondents, in accordance with the provisions of Sections 39, 39b and 39c of the California Irrigation District Act, made demand upon the Board of Supervisors and officers of the County of Tulare, State of California, to perform their several duties under said sections in relation to the levy of assessments upon lands within the Lindsay-Strathmore Irrigation District, as provided by said statute, and upon the refusal of said officers to perform their said duties, filed a petition for writ of mandate in the Superior Court of the State of California, in and for the [fol. 41] County of Tulare, which said petition was and is in words and figures as set forth in Exhibit B hereunto annexed and made a part hereof by this reference, and that upon the presentation of the same to the said Superior Court, the court caused to be issued an alternative writ of mandate, which said alternative writ was and is in words and figures as set forth in Exhibit C hereunto annexed and made a part hereof by this reference.

#### Ш

That subsequently the said alternative writ of mandate was served upon the respondents therein named and the matter came on for hearing at the time stated in said alternative writ of mandate and was duly continued by the court until the 25th day of September, 1937, whereupon the respondents named therein made return to said alternative writ by way of demurrer thereto, in words and figures as set forth in Exhibit D hereunto annexed and made a part hereof by this reference, and at said hearing the respondents, through their counsel, moved the said court for an order joining the said Lindsay-Strathmore Irrigation District as a party respondent to said proceedings under the provisions of Section 389 of the Code of Civil Procedure of the State of California, which said motion was granted, whereupon the said Lindsay-Strathmore Irrigation District filed a demurrer to the petition in the same form as that filed by the other respondents heretofore mentioned, and further filed a special return thereto, in words and figures set forth in Exhibit E hereunto annexed and made a part hereof by this reference, whereupon the said Superior Court made an order suspending further proceedings in said cause during the pendency of the proceedings in the above entitled cause, in words and figures as hereunto annexed, marked Exhibit F, and made a part hereof by this reference.

## IV

That the said Lindsay-Strathmore Irrigation District has given notice of a motion to suspend the proceedings in [fol. 42] the other said causes above enumerated in paragraph I hereof on the grounds of the pendency of the proceedings in the above entitled cause.

#### V

That none of said actions should be stayed or enjoined for the following reasons:

(a) That none of them are actions or proceedings contemplated by subsection c of section 83 of the Bankruptcy Act of 1898, and further, that the action against the Board of Supervisors of Tulare County, California, relates to the exercise of the political or governmental powers of the State of California, County of Tulare, and comes within the prohibitions of subsection i of section 83 of the act, and the injunction and order sought would violate the provisions of subsection a of subsection c of section 83 of the Bankruptcy Act of 1898 in that it would interfere with the political or governmental powers of the Lindsay-Strathmore Irrigation District.

- (b) Because Chapter 10 of the Bankruptcy Act of 1898, under which these proceedings are prosecuted, is unconstitutional and void for the following reasons:
- (1) Under Section 8, Article I of the Constitution of the United States, Congress has power to pass uniform laws on the subject of bankruptcy throughout the United States, and said Act is not a uniform law on the subject of bankruptcy throughout the United States.
- (2) That under said act private property may be taken for public use without just compensation, contrary to the provisions of Amendment V of the Constitution of the United States, and the petitioner's petition and the plan of readjustment filed therewith propose to take respondents' property without just compensation.
- [fol. 43] (3) That under the Constitution of the United States and the plan of government set forth therein, the Federal Government is a government of delegated powers, and no power has been delegated to Congress to pass legislation such as said Act of Congress, being Sections 81 to 84, inclusive, of the Bankruptcy Act of 1898, regulating the rights of citizens, and particularly these respondents, against the states or state governmental agencies in the manner therein provided.
- (4) That said act was passed in violation of the reserved rights of states of the United States as guaranteed to the states by Article X of the Federal Constitution, and because the passage of said act is a violation of the rights of citizens, and particularly these respondents, guaranteed and reserved to them by Amendment X to the Constitution.
- (5) Said act attempts to subject state governmental agencies to the jurisdiction of federal courts contrary to the

plan and scheme of government, as set out in the Constitution of the United States.

- (6) Said act in other respects violates the Constitution of the United States.
- (c) Because the petition herein does not state facts sufficient to constitute a good and valid petition under said statute.
  - [fol. 44] (d) Because inasmuch as respondents own more than 75% in amount of the outstanding unpaid bonds of the Lindsay-Strathmore Irrigation District it is an impossibility for the petitioner to obtain the consent of 51% of said class of indebtedness.
  - (e) Because each separate bond and coupon constitutes a separate class under the provisions of Section 52 of the California Irrigation District Act providing that bonds and coupons shall be paid in the order of presentation.
  - (f) Because the orders sought interfere with vested rights of the respondents, and the orders sought are prohibited by subsection c of section 83 of the Bankruptcy Act of 1898, providing for an injunction "except where rights have become vested"; that in this regard respondents refer to all of the allegations set forth in Exhibits A and B, and incorporate said allegations herein by this reference and re-allege each and every allegation contained in said complaint and petition for writ of mandate, showing thereby and now alleging that these respondents became entitled to and were vested with the right to demand and to have performed the duties specified by Sections 39, 39b and 39c of the California Irrigation District Act of the State of California at the time when the Board of Directors of said Lindsay-Strathmore Irrigation District failed to levy the assessments specified and referred to in said petition for writ of mandate in the years 1933, 1935 and 1936 and before the filing or commencement of these proceedings, and the property rights which accrued or would have accrued and the assessments which were made or should have been made became and are rights in trust vested in these respondents.
  - (g) Because the obligations of the bonds owned and held by respondents, as aforesaid, are obligations of the State of California, which the State of California has by statute pro-

vided shall be met out of certain revenues to be derived [fol. 45] partly from assessments to be levied by the Board of Supervisors of Tulare County, and constitute political and/or governmental powers and duties of the State of California and of the Board of Supervisors of Tulare County.

(h) That the plan proposed is inherently defective, unfair and violates the Constitution of the United States in that it proposes that one class of creditors, to-wit: Reconstruction Finance Corporation, shall receive bonds and that another class of creditors, to-wit: these respondents, shall receive cash.

Wherefore, said respondents, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins. deceased. Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington trust, and C. A. Moss, pray that no order staying or enjoining, pending the determination of the cause in the above entitled matter, the commencement or continuance of suits or actions or proceedings against the petitioner or any officer or inhabitant thereof on account of the securities affected by the plan, as set forth in said petition, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under said/securities. or to enjoin or stay the prosecution of the suits now being maintained, as aforesaid, by these respondents, be granted, and also that no interlocutory decree be entered herein ordering that the plan be temporarily operative with respect to any securities affected by the plan or providing that the payment of interest or principal, or both, of or on account of said indebtedness be extended or otherwise adjusted, and that the temporary restraining order contained in said order to show cause be set aside and vacated, and that said respondents be not enjoined from prosecuting their said actions.

W. Coburn Cook, Attorney for Milo W. Bekins, et al., Respondents.

[fol. 46] Duly sworn to by Reed J. Bekins. Jurat omitted in printing.

Service and receipt of copy of the foregoing Return admitted this 11th day of October 1927

mitted this 11th day of October, 1937.

Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, Jas. B. McBride, Attorneys for Lindsay-Strathmore Irr. District.

[fol. 47] EXHIBIT "A" TO RETURN

In the Superior Court of the State of California in and for the County of Tulare

No. 26805

MILO W. BERINS and REED J. BERINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, Milo W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased, Plaintiffs,

VS.

LINDSAY-STRATHMORE IRRIGATION DISTRICT, Defendant

COMPLAINT

Plaintiffs complain and allege:

I

That Lindsay-Strathmore Irrigation District was duly organized on the 16th day of October, 1915, under and by virtue of the laws of the State of California, and ever since has been and now is an irrigation district organized and existing under and by virtue of the laws of the State of California.

п

That said Lindsay-Strathmore Irrigation District duly issued, sold and delivered its interest-bearing bonds, designated as first issue, dated July 1, 1916, in the principal amount of \$1,316,000; and second issue, dated October 1, 1918, in the principal amount of \$245,000, with interest coupons attached.

Щ

That said bonds were in the denomination of \$1000.00 and \$500.00, and each of them by its terms is payable to bearer,

and the same bear interest at the rate of 6% per annum, evidenced by interest coupons attached thereto, payable January 1st and July 1st of each year.

[fol. 48] IV

That plaintiffs, Milo W. Bekins and Reed J. Bekins, are trustees appointed by the will of Martin Bekins, deceased, confirmed by decree of the Superior Court of the State of California, in and for the City and County of San Francisco, dated April 29, 1935.

#### V

That plaintiffs, as trustees appointed by the will of Martin Bekins, deceased, are the owners and holders of certain of said bonds in the principal amount of \$72,500.00, and of the unpaid coupons attached; that certain coupons thereof in the principal amount of \$12,795.00, and certain of said bonds in the amount of \$44,500.00 matured and were presented for payment to the treasurer of said district and payment thereof was refused, and the same are in the respective amounts and bore the respective bond numbers as set forth and described in Exhibit A hereunto attached and made a part hereof by this reference.

#### VI

That all of said past due bonds and coupons were duly presented to the treasurer of said district for payment as shown in said exhibit; that notice has not been given that funds are available for payment thereof, and the same remain wholly unpaid.

And as a second, separate and distinct cause of action, plaintiffs allege:

#### 1

That Lindsay-Strathmore Irrigation District was duly organized on the 16th day of October, 1915, under and by virtue of the laws of the State of California, and ever since has been and now is an irrigation district organized and existing under and by virtue of the laws of the State of California.

That said Lindsay-Strathmore Irrigation District duly [fol. 49] issued, sold and delivered its interest bearing bonds, designated as first issue, dated July 1, 1916, in the principal amount of \$1,316,000; and second issue, dated October 1, 1918, in the principal amount of \$245,000, with interest coupons attached.

#### Ш

That said bonds were in the denomination of \$1000.00 and \$500.00, and each of them by its terms is payable to bearer, and the same bear interest at the rate of 6% per annum, evidenced by interest coupons attached thereto, payable January 1st and July 1st of each year.

#### IV

That plaintiffs, Milo W. Bekins and Reed J. Bekins, are trustees appointed by the will of Katherine Bekins, deceased, confirmed by decree of the Superior Court of the State of California, in and for the county of Los Angeles, May 31, 1936.

#### V

That plaintiffs, as trustees appointed by the will of Katherine Bekins, deceased, are the owners and holders of certain of said bonds in the principal amount of \$15,500.00, and of the unpaid coupons attached; that certain coupons thereof in the principal amount of \$2775.00 and certain of said bonds in the principal amount of \$7500.00 matured and were presented for payment to the treasurer of said district and payment thereof was refused, and the same are in the respective amounts and bore the respective bond numbers as set forth and described in Exhibit B hereunto attached and made a part hereof by this reference.

#### VI

That all of said past due bonds and coupons were duly presented to the treasurer of said district for payment as shown in said exhibit; that notice has not been given that funds are available for payment thereof, and the same remain wholly unpaid.

[fol. 50] Wherefore, plaintiffs demand judgment against defendant

- 1. For judgment in favor of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, in the sum of \$44,500.00, amount of said bonds, and the sum of \$12,795.00, amount of said coupons, together with interest thereon at the rate of 7% per annum from the dates of presentation; for costs of suit; for such other and further relief as may be just.
- 2. For judgment in favor of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, in the sum of \$7500.00, amount of said bonds, and the sum of \$2775.00, amount of said coupons, together with interest thereon at the rate of 7% per annum from the dates of presentation; for costs of suit; for such other and further relief as may be just.

W. Coburn Cook, Attorney for Plaintiffs.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

Reed J. Bekins, being first duly sworn, says:

That he is one of the plaintiffs in the foregoing complaint; that he has read said complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Reed J. Bekins.

Subscribed and sworn to before me this 13th day of May, 1937. Minnie F. Dobbin, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

#### EXHIBIT "A" TO COMPLAINT

Par. I

Bonds	which	have	matured:		
-------	-------	------	----------	--	--

- 6	Bond No.	Issue	Date due		resented	Amou
265	8	First	July 1, 193	Nov.	7, 1933	\$1,000.
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	5				:	
	0	R. Barrie	attack to the	all.		
27	2		W	Thomas .		
	8	45.30				
	<b>4</b>		July 1, 198	Ane.	2, 1934	
80	<b></b>		,		2,	
97	å				•	
45			July 1, 190	55 July	8, 1935	
44	0	1.0		27.5		
- 100000	1		3 J. C.			
45	4		PERSONAL PROPERTY.			
45	<b>5</b>		244 1 100	6 July	1, 1986	
-		5000	July 1, 190	90 July	1, 1900	
TE						
	0					
	<b>3</b>					
	<b>6</b>					
-	1		A PERSON		•	
	5	•	1			
	6		12			
	8		20.30			
55	9	- 1				
	0		July 1, 19	Nov.	7, 1933	\$500.
	8		July 1, 10		4, 1000	
0.000	7				46	** 6
	3	: #				
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. 200	6				0 1004	
41	10		July 1, 19	34 Aug.	2, 1934	
	11	7.1				-
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	8					
	4		July 1, 19	35 July	8, 1935	
22	3					
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	25					
	77		July 1, 19	936 July	1, 1936	
	85		Time Some			
	88					
	87			a Part Silver		
	88					
5	80					

Coupons which have matured:

1 coupon in the amount of \$30.00, 6% coupons, which matured July 1, 1933, presented for payment November 7, 1933, detached from each of the following bonds of the first issue, to-wit: bonds numbered 263, 264, 265, 266, 272, 273,

274. Total, \$210.00.

3 Coupons, in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934 and July 1, 1934, and were presented for payment respectively July 1, 1933, January 18, 1934 and July 17, 1934, detached from each of the following bonds of the first issue, to-wit:

bonds humbered 354, 355, 356. Total, \$270.00.

5 Coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, and July 8, 1935, detached from each of the following bonds of the first issue, to-wit, bonds num-

bered 439, 440, 441, 454, 455. Total; \$750.00.

7 coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, and July 1, 1936, detached from each of the following bonds of the first issue, to-wit: bonds numbered 526, 532, 536, 537, 538, 540, 541, 545, 546, 558, 559, 560.

Total, \$2520.00.

8 coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, and January 1, 1937, which were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, July 1, 1936, and January 1, 1937, detached from each of the following bonds of the first issue, to-wit: bonds numbered 647, 648, 649, 650, 749. Total, \$1200.00.

[fol. 53] 8 coupons in the amount of \$30.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, which were presented for payment

respectively July 1, 1933, January 18, 1934, July 2, 1934, January 1, 1935, July 8, 1935, January 1, 1936, July 1, 1936, January 1, 1937, detached from each of the following bonds of the first issue, to-wit: bonds numbered 750, 751, 752, 995, 996, 997, 1238, 1942, 1943, 1944, 1945, 1946. Total, \$2880.00.

1 coupon in the amount of \$15.00, 6% coupon, which mamatured July 1, 1933, presented for payment November 7, 1933, detached from each of the following bonds of the first issue, to-wit: bonds numbered 305, 307, 332, 333, 334, 335,

336. Total, \$105.00.

3 coupons in the amount of \$15.00 each, 5% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, and were presented for payment respectively July 1, 1933, January 18, 1934, and July 17, 1934, detached from each of the following bonds of the first issue, to-wit: bonds numbered 410, 411, 412, 413, 414. Total, \$225.00.

5 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, and July 8, 1935, detached from each of the following bonds of the first issue, to-wit: bonds numbered 482, 483, 499, 514, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525. Total, \$1050.00.

7 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, and July 1, 1936, detached from each [fol. 54] of the following bonds of the first issue, to-wit: bonds numbered 577, 585, 586, 587, 588, 589, 590, 591, 592. Total, \$945.00.

8 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1935, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, July 1, 1936, January 1, 1937, detached from each of the following bonds of the first issue, to-wit: Bonds numbered 682, 683, 686, 687, 688, 689, 690, 691, 733, 734, 781, 782, 783, 785, 787, 788, 817, 818, 820, 821, and 936. Total, \$2640.00.

#### Par. I

	_			. 15-1
Bond, No.	Issue	Date	Date presented	Amount
385	First	July 1, 1934	Aug. 2, 1934	\$500.00
386				
388				
415416		· #		
417	*	•	•	
418			4	
420		July 1, 1935	July 8, 1935	
481		4 4		
508	. 0			•
509			•	
515				1 1
Total				\$7,500.00

#### Par. II

#### Coupons which have matured:

3 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, and were presented for payment respectively July 1, 1933, January 18, 1934 and July 17, 1934, detached from each of the following bonds of the first issue, to-wit: bonds numbered 385, 386, 387, 388, 415, 416, 417, 418, 419, 420. Total, \$450.00.

5 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, and July 8, 1935, detached from each of the following bonds of the first issue, to-wit: bonds numbered 480, 481, 508, 509, 515. Total, \$375.00.

8 coupons in the amount of \$15.00 each, 6% coupons, which matured July 1, 1933, January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, and were presented for payment respectively July 1, 1933, January 18, 1934, July 17, 1934, January 3, 1935, July 8, 1935, January 1, 1936, July 1, 1936, and January 1, 1937, detached from each of the following bonds of the first issue, to-wit: bonds numbered 676, 677, 696, 697, [fol. 56] 698, 840, 1290, 1291, 1292, 1401, 1402, 1416, 1417, 1418, 1419, 1420. Total, \$1920.00.

1 coupon in the amount of \$15.00, 6% coupon, which matured July 1, 1933, and presented for payment July 1, 1933, detached from each of the following bonds of the first issue, to-wit: bonds numbered 306 and 308. Total, \$30.00.

[fol. 57] EXHIBIT "B" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF TULARE

#### No. 27007

MILO W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine; J. R. Mason; James H. Jordan; C. A. Moss, and H. E. Curtis, Petitioners,

VS.

BOARD OF SUPERVISORS OF TULARE COUNTY, Respondent

PETITION FOR WRIT OF MANDATE

To the Honorable Superior Court Aforesaid:

The petitioners respectfully represent:

T

That Lindsay-Strathmore Irrigation District was duly organized on the 16th day of October, 1915, under and by virtue of the laws of the State of California, and ever since has been and now is an irrigation district organized and existing under and by virtue of the laws of the State of California, and is situated within the County of Tulare.

#### II

That said Lindsay-Strathmore Irrigation District duly issued, sold, and delivered its interest bearing bonds designated as First Issue, dated July 1, 1916, in the principal amount of \$1,316,000, and Second Issue dated October 1, 1918, in the principal amount of \$245,000.00.

#### Ш

That each of said bonds hereinabove alleged was so made, executed, sold, delivered and issued by Lindsay-Strath-

more Irrigation District, for the purpose of constructing or [fol. 58] purchasing necessary irrigation canals or works or acquiring necessary property and rights therefor, or for the purpose of acquiring waters, water rights, reservoirs, reservoir sites or other property necessary for the purposes of the Lindsay-Strathmore Irrigation District or to provide for drainage made necessary by irrigation provided for the Lindsay-Strathmore Irrigation District, or to provide for the construction, acquisition, operation, leasing or control of plants for the generation, distribution, sale or lease of electrical energy or a combination of such purposes.

#### IV

That said bonds were in the denomination of \$1000.00 and \$500.00 and each of them by its terms is payable to bearer and the same bear interest at the rate of 6% per annum, evidenced by interest coupons attached thereto, payable January 1 and July 1 of each year, and that on the 11th day of September, 1933, there were outstanding and unpaid on said bond issues \$1,438,000.00 principal, with certain accrued and unpaid interest thereon.

#### V

That the following amounts of principal of said bonds and interest upon said bonds respectively matured on the said bond issues the years as indicated;

Year	 Bonds Mat.	Interest	Total
1933	 63,500.00	88,132.50	151,632.50
1934	 63,500.00	84,322.50	147,822.50
1935	 80,000,00	80,550.00	160,550.00
1936	 80,000.00	75,750.00	155,750.00
1937	 82,500.00	70,987.50	153,487.50

#### VI

That on the 11th day of September, 1933, the Board of Directors of the Lindsay-Strathmore Irrigation District adopted its resolution levying assessments, which said resolution to see a set forth in Exhibit "A" hereunto annexed and made a part hereof by this reference.

#### VII

That the assessment so levied was the sole source of revenue of said district during the year of said assessment, except water tolls in the approximate amount of \$150,00.00, and that the amount levied was insufficient, together with the water tolls, to meet the requirements of said district for maintenance and operation and bond interest and principal, and that no assessment was levied by said Board of Directors during the year 1933, except the assessment levied in accordance with the said resolution.

#### VIII

That at the time of the levy of said assessment, the Lindsay-Strathmore Irrigation District was in default in payment upon its bonds and bond interest not less than 20% and it has remained in default ever since.

#### IX

That likewise in the year 1934; and also in the year 1935; and also in the year 1936, the Board of Directors of said Lindsay-Strathmore Irrigation District levied assessments upon the lands of said district in like form and purport as that levied in 1933, and the said Board of Directors in its resolutions adopted in the years 1934, '35, and '36 set forth, as it did in 1933, that the said Board, by reason of the default, availed itself of the provisions of Section 11 of the District Securities Commission Act, and that the Board has estimated the amount that in its judgment it would be reasonable possible for the land in the district taken as a whole to pay, without exceeding a delinquency of 15%, and determined the said amount and levied its assessment in accordance therewith, and that the assessment levied in each of said years, together with the amount of all [fol. 60] other available sources of revenue applicable to payment of operation, maintenance, construction, and bond interest and principal, was insufficient to pay the amounts due and to become due during the ensuing year, and in particular the assessment levied by said Board of Directors in September 1936, together with the funds on hand and sources of revenue available for those purposes, was insufficient in amount to pay interest due or that would become due upon all of the outstanding bonds of the district

on the first day of the next ensuing January and the first day of the next ensuing July, together with the principal of all bonds of the district that had matured or that would mature before the close of the next ensuing calendar year. together with the amount necessary to pay in full all sums due or that would become due from the district before the close of the next ensuing calendar year on account of rentals, charges for land, water, water-works, or other property acquired by said district under lease or contract, together with the amount necessary to pay in full all sums due or that would become due from the district before the close of the next ensuing calendar year on account of the contracts entered into between the district for power or fuel used or to be used for the pumping of water for the irrigation of land within the district, together with an amount sufficient to pay in full the amount of all unpaid warrants the district issued in accordance with the California Irrigation District Act and the amount of any other contract or obligation of the district which had been reduced to judgment, together with an amount sufficient to provide for replacement or reconstruction, and such other amounts as were necessary for any of the purposes of the act; that in calculating and ascertaining the amount of the assessment levied in the year 1936, as aforesaid, the Board of Directors made no provisions for redemption of or interest upon its bonded indebtedness and totally failed [fol. 61] to make provisions for the payment thereof by assessment or otherwise.

#### X

That Petitioners, Milo W. Bekins and Reed J. Bekins are trustees appointed by the will of Martin Bekins, deceased, and as such trustees are the owners of bonds of said issues in the amount of \$53,500.00, which by their terms matured in the years 1933 to 1937, inclusive, and are also the owners and holders of interest coupons detached from bonds of said issues, which according to their face matured in the years 1933 to 1937, inclusive, in the sum of \$13,635.00; that Milo W. Bekins and Reed J. Bekins are trustees appointed by the will of Katherine Bekins, deceased, and as such trustees are the owners and holders of bonds of said issues in the sum of \$10,000.00, which matured in the years 1933 to 1937, inclusive, and are also the owners and holders of

interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$3,015.00.

That James Irvine is the owner and holder of bonds of said issues in the amount of \$14,000.00, which according to their terms matured in the years 1933 to 1937, inclusive, and is also the owner and holder of interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$3,825.00.

That J. R. Mason is the owner and holder of bonds of said issues in the amount of \$3,500.00, which according to their terms matured in the years 1933 to 1937, inclusive, and is also the owner and holder of interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$7,200.00.

That James H. Jordan is the owner and holder of bonds of said issues in the amount of \$9,500.00, which according to their terms matured in the years 1933 to 1937, inclusive, [fol. 62] and is also the owner and holder of interest coupons detached from said bonds, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$2,383,00.

That C. A. Moss is the owner and holder of interest coupons detached from bonds of said issues, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$1,440.00.

That H. E. Curtis is the owner and holder of interest coupons detached from bonds of said issues, which according to their face matured in the years 1933 to 1937, inclusive, in the amount of \$645.00.

#### XI

That all of the said matured bonds and coupons owned and held by petitioners, as aforesaid, were presented to the treasurer of the Lindsay-Strathmore Irrigation District for payment and payment thereof demanded at the time of the maturity of said several bonds and coupons, but that payment thereof was refused and the same and each of them is wholly unpaid and none of the petitioners have been notified that funds are available for payment thereof or of any of said bonds or coupons.

That prior to the commencement of this action the said Lindsay-Strathmore Irrigation District entered into a contract with the Reconstruction Finance Corporation of the United States, an agency of the United States, by the terms of which the said Lindsay-Strathmore Irrigation District secured a loan from said Reconstruction Finance Corporation in the sum of \$860,000.00, in accordance with the provisions of Title 43, Sec. 403, U. S. C. A., which said loan was calculated to pay the bondholders of said district 59.978% of the principal amount of the bonds held by such bondholders; that the said sum was made available by the Reconstruction Finance Corporation for the purpose of [fol. 63] reducing and refinancing the bonded indebtedness of said Lindsay-Strathmore Irrigation District, and that after the levy of the assessment made in the year 1936, as aforesaid, and prior to August 1, 1937, bondholders of said Lindsay-Strathmore Irrigation District holding in excess. of 85% of the bonded indebtedness of said district were paid out of the proceeds of said loan the said sum of 59.978% of the principal of the bonds severally owned by them, whereupon the said bondholders surrendered their bonds and interest coupons with claims thereon in accordance with the terms of the plan for the readjustment of the debts of the said Lindsay-Strathmore Irrigation District; that said plan provided for payment to such bondholders as would accept the payment of said sums out of the proceeds of the loan made by the Reconstruction Finance Corporation, as aforesaid, and for the issuance of refunding bonds by the said Lindsay-Strathmore Irrigation District bearing interest at 4% per annum, amortized over a period of 33 years with no principal payable during the first three years, the bonds to be issued and delivered to the Reconstruction Finance Corporation in the exact amount of the loan advanced by the Reconstruction Finance Corporation and accepted by the bondholders as aforesaid; that under the provisions of said plan the said bondholders waived all claim to payment out of the funds of said district as to the bonds surrendered by them and as to the coupons surrendered by them; that the bonds and coupons so surrendered by the depositing bondholders were delivered into the custody of the Reconstruction Finance Corporation, which holds them as evidence of the advancement on the loan by

the Reconstruction Finance Corporation until the delivery of the refunding bonds in accordance with the plan.

#### XIII

That under the provisions of the contract between the Reconstruction Finance Corporation and the Lindsay-[fol. 64] Strathmore Irrigation District no sums are payable to the Reconstruction Finance Corporation on account of the principal or interest on the bonds transferred to them, as aforesaid, nor on account of their contract for the said loan, nor on account of interest or principal upon the refunding bonds issued under said plan prior to January 1, 1938, whereupon interest at 4% per annum from the date of disbursement of said loan will be payable.

#### XIV

That the only matured bond principal and interest obligations of said district which are unpaid are those owned and held, as aforesaid, by the petitioners, and in this respect petitioners have no knowledge or information as to whether or not their are any other bondholders of the Lindsay-Strathmore Irrigation District who have not deposited their bonds and hold unpaid matured claims thereunder other than your petitioners, and basing their allegations thereon deny that there are any such bondholders.

#### XV

The Board of Directors of Lindsay-Strathmore Irrigation District intend to levy an assessment in September 1937, in like form and manner as that heretofore levied in the years 1933 to 1936, and will provide therein for payment of the amounts of interest payable to the Reconstruction Finance Corporation upon its loan, but do not intend to levy an amount sufficient to pay the principal and interest due petitioners.

#### XVI

That heretofore and during the month of August 1937, petitioners made demand upon the respondent, in accordance with the provisions of Section 39a, 39b, 39c, 39d of the California Irrigation District Act, to cause an assessment

roll to be prepared and to levy an assessment upon the lands of said district sufficient to pay the aforesaid matured bonds and interest of petitioners; that the said Board of [fol. 65] Supervisors refused and has neglected to cause such roll to be prepared or to levy such assessment or any assessment upon the lands of said Lindsay-Strathmore Irrigation District to pay the said claims.

#### XVII

That your petitioners are the parties beneficially interested herein and will suffer irreparable injury unless the said Board of Supervisors be required to levy an assessment upon the lands of said district in accordance with the provisions of the California Irrigation District Act; that your petitioners have no plain, speedy, or adequate remedy in the ordinary course of law.

Wherefore, your petitioners pray judgment:

- 1. That a writ of mandate issue out of and under the seal of this court directed to the respondent, commanding that the respondent Board of Supervisors forthwith proceed to cause an assessment roll of the Lindsay-Strathmore Irrigation District to be prepared and to levy an assessment upon the lands of said district sufficient in amount to pay in full the claims of the petitioners amounting to \$90,500.00 of bonds and \$32,143.00 coupons of bonds, with interest, and that all other steps necessary or proper to be taken by said Board of Supervisors for the purpose of levying said assessment be taken.
- 2. For such other and further relief as to the Court may seem just, together with petitioners' costs.
  - W. Coburn Cook, Chas. L. Childers, Attorney for Petitioners.

[fol. 66] STATE OF CALIFORNIA, County of Kern, 88:

Reed J. Bekins, being duly sworn, says:

That he is one of the petitioners named in the foregoing petition; that he has read the same, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters that he believe- them to be true.

Reed J. Bekins.

Subscribed and sworn to before me this 30th day of August, 1937. Geraldine Hall, Notary Public in and for the County of Kern, State of California. (Seal.)

#### [fol. 67] EXHIBIT "A" TO PETITION

"Whereas, the assessor of the Lindsay-Strathmore Irrigation District did complete his assessment book for said district for the Assessment Year 1933, on August 1, 1933. and having prior thereto assessed all of the taxable real estate within the boundaries of said district, and having on said day delivered the said assessment book to the secretary of the Board of Directors of said district, and the secretary aforesaid having immediately thereafter given notice of the time when said board, acting as a Board of Equalization. would meet to equalize said assessment, by publication in a newspaper of general circulation, to-wit: the Lindsay Gazette, a newspaper published and printed in the County of Tulare, State of California, in which county the said district is wholly situated, which time was not less than twenty (20) nor more than thirty (30) days from the date of the first publication of said notice; and in the meantime the said assessment book remained in the office of the said secretary for the inspection of all persons interested, and the Board of Directors of said Lindsay-Strathmore Irrigation District, acting as a Board of Equalization, met and continued in session from time to time as long as was necessary, not exceeding ten days, exclusive of Sundays, to hear and determine such objections to the valuations and assessments as might come before them.

And such equalization session having been held and completed, and the secretary of said Board having been present at such session and having noted all changes made in the valuation of property, and otherwise, as provided by law, and having after the close of said session extended into columns and added the total values, as finally equalized by said Board, and said assessment book, so equalized and finally footed now being before this Board, and this Board finding all of the facts to be as aforesaid, and

Whereas, the Lindsay-Strathmore Irrigation District duly levied its annual assessment for the year 1932, as required by the California Irrigation District Act, and

Whereas, the money derived from said assessment, to-

gether with all other revenue allocated to payment of bond interest and principal, was insufficient to meet the said bond interest and principal when due and said district has defaulted on its bond principal and interest to an extent in

excess of 20% of the amount due, and

Whereas, by reason of such default said district is subject to and has, by resolution of its Board of Directors adopted at a regular meeting of said Board held in its office on the 7th day of July, 1933, availed itself of the provisions of that certain act of the Legislature of the State of California, entitled "An act to amend the California Districts Securities Commission Act by repealing Section 11 thereof and adding a new section 11 thereto etc." in effect April 11th, 1933, and

Whereas, the secretary and manager of the district have compiled and prepared a report upon the productivity of the lands in the district, crops growing and to be grown during the year, market conditions as well as they can be forecast, the cost of producing and marketing crops, and obligations of the land respecting taxes and public liens and other data and matter to enable this Board of Directors to estimate the total amount, as in its judgment, it will be reasonably possi-[fol. 68] ble for the lands in said district, taken as a whole to pay, without exceeding a delinquency of 15%, to be used by said board as a basis upon which the annual assessment of the district for the year 1933 may be computed and levied under the provisions of said Section 11, and

Whereas, the said Board of Directors, after a careful study of all of the facts submitted as above finds that in its judgment it will be reasonably possible for the lands in said district, taken as a whole, to pay only the sum of \$64,103.34 without exceeding a delinquency of fifteen per cent, and it appearing to this board, and this board so finds, that it is necessary to raise the said sum of \$64,103.34 for the assess-

ment year 1933.

Now Therefore, it is hereby ordered that for the purpose of raising an amount sufficient to total said sum of \$64,-103.34, that an assessment be levied upon all of the taxable real estate within said district, and that the rate of assessment be and the same is hereby fixed in the sum of \$4.26 on each one hundred dollars of the valuation of said real estate, as such valuation appears upon the said assessment roll, and it is further ordered that the same be and is hereby levied as and for the amounts assessed, as above set out."

[fol. 69] Exhibit "C" to Return

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF TULARE

#### No. 27007

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine, J. R. Mason, James H. Jordan, C. A. Moss, and H. E. Curtis, Petitioners,

VS.

BOARD OF SUPERVISORS OF TULARE COUNTY, Respondent

#### ALTERNATIVE WRIT OF MANDATE

The People of the State of California Send Greetings to the Board of Supervisors of Tulare County:

Whereas, it appears by the verified petition of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as trustees appointed by the Will of Katherine Bekins, deceased; James Irvine; J. R. Mason; James H. Jordan: C. A. Moss, and H. E. Curtis that they own and hold matured bonds of the Lindsay-Strathmore Irrigation District in the sum of \$90,500.00, and matured interest coupons in the amount of \$32,143.00, which matured during the years 1933 to 1937, inclusive, none of which have been paid, and that the Board of Directors of Lindsay-Strathmore Irrigation District have failed to levy an assessment upon the lands within the Lindsay-Strathmore Irrigation District during the years 1933, 1934, 1935, and 1936 to raise an amount sufficient to pay the said bonds and coupons of the petitioners, and that, you, the said Board of Supervisors of Tulare County, have refused to cause an assessment roll to be prepared and to levy an assessment

[fol. 70] upon the lands within the Lindsay-Strathmore Irrigation District, as provided by Sections 39 and 39c of the California Irrigation District Act, for the purpose of raising funds to pay the said claims of the petitioners,

Now, Therefore, We Command You that immediately upon the receipt of this writ, you, the said Board of Supervisors of Tulare County, cause to be prepared an assessment roll of said Lindsay-Strathmore Irrigation District and forthwith proceed to levy an assessment upon the lands within the Lindsay-Strathmore Irrigation District in an amount sufficient to raise the amount due petitioners for bond principal in the sum of \$90,500.00 and also sufficient to raise the amount due petitioners for bond interest in the amount of \$32,143.00, or that in default, you, the said Board of Supervisors, show cause before this court why you have not done so, in the courtroom of this court in Department 1 thereof, on the 13th day of September, 1937, at the hour of 10 a. m.

Witness, the Honorable Frank Lamberson, Judge of the Superior Court of the State of California, in and for the County of Tulare.

Dated August 31st, 1937.

Attest:

Gladys Stewart, Clerk, by Troy Owen, Deputy Clerk. (Seal.)

[fol. 71] EXHIBIT "D" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF TULARE

No. -. Dept. -

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine; J. R. Mason; James H. Jordan; C. A. Moss, and H. E. Curtis, Petitioners,

VS.

BOARD OF SUPERVISORS OF TULARE COUNTY, Respondent
DEMURREE

Now comes the Board of Supervisors of the County of Tulare, State of California, the respondent above named,



and demurs to the petition on file in the above entitled matter of the ground that:

#### I

Said petition does not state facts sufficient to constitute a cause of action against said respondent or to warrant the issuance of a Writ of Mandate as prayed for in said petition.

> Walter C. Haight, District Attorney of the County of Tulare, by Leroy McCormick, Assistant District Attorney; Leroy McCormick, John R. Lock, Jr., Attorneys for Respondent.

Memorandum of Points and Authorities

C. C. P., Sec. 444.

Sec. 11, District Securities Commission Act, Statutes 1931, page 2263; Statutes 1933, page 355.

[fol. 72] EXHIBIT "E" TO RETURN

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF TULARE

#### No. 27007

MILO W. BERINS and REED J. BERINS, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins, and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine; J. R. Mason; James H. Jordan; C. A. Moss, and H. E. Curtis, Petitioners,

VS.

BOARD OF SUPERVISORS OF TULARE COUNTY and LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Irrigation District, Respondents

SPECIAL RETURN OF THE LINDSAY-STRATHMORE IRRIGATION DISTRICT

Lindsay-Strathmore Irrigation District, an irrigation district organized and existing as such a district under and by

virtue of the laws of the State of California and by order of Court made a party respondent herein, hereby, but without in anywise or manner waiving or abandoning its demurrer heretofore filed herein, files this, its special return to the Alternative Writ of Mandate issued in this action or proceeding on the 31st day of August 1937 and for its return alleges:

I

That on the 21st day of September, 1937, the above named district did commence, in the District Court of the United States for the Southern District of California, Northern Division, a proceeding in bankruptcy entitled "In the matter of the Petition of Lindsay-Strathmore Irrigation District, an insolvent taxing agency, for confirmation of a Plan. for the Composition and Readjustment of its Debts" and numbered 4745 on the records and files of that Court and that proceeding is now pending in that Court and was commenced under and pursuant to Chapter X of the Bankruptcy Act, being the act of the Congress of the United States entitled an act 'To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the [fol. 73] United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto, approved August 16, 1937' (Public No. 302-75 Congress) by causing to be filed in that Court its petition for the confirmation of a plan for the composition and readjustment of its bonded The plan and the proceeding seeking the indebtedness. judgment of that Court confirming the same, directly affect all of the outstanding bonded indebtedness of this respondent district, including the very same and identical bonds alleged to be held by the petitioners herein and upon which they, and each of them, base their several and respective claims, in this, that the decree of that Court confirming the plan will, upon the consummation thereof, release and discharge this respondent from all liability upon all of the indebtedness on which the petitioners herein base their several and respective claims.

п

On September 21, 1937, an order was made in that proceeding and by the above mentioned District Court of the United States, wherein it is now pending, approving the petition of this respondent as being properly filed therein

in good faith and in compliance with the provisions of the above mentioned Chapter X of the Bankruptcy Act.

Thereafter and on September 22, 1937 there was also issued out of that Court and in that proceeding an order directed to the creditors of this respondent district, including, among others, all of the petitioners herein, ordering them and all of them to appear in that Court on October 11. 1937, and show cause, if any they have, why an order should not be made by that Court enjoining and staying, pending the determination of the above mentioned matter or proceeding now pending therein, the commencement or continuation of suits, actions or proceedings against the dis-[fol. 74] trict on account of the securities affected by its plan, including the very same and identical bonds upon which the petitioners herein base their several and respective claims, or to enforce the levy of taxes or assessments for the payment of obligations under such securities. That order also provide that, pending the hearing of any cause which might be shown, that all of the creditors of the district, including the petitioners herein, and their agents and attorneys, are restrained and enjoined from commencing or continuing any suit, action or proceeding, including this proceeding, against the district, on account of any of the securities affected by the plan, including the bonds upon which the petitioners herein base their several and respective claims, or to enforce any lien or to enforce the levy of taxes or assessments under such securities.

Wherefore this respondent prays that the order of this Court be made and entered herein suspending any and all further acts or proceedings in this action or proceeding until the termination of the above mentioned proceeding which was commenced and brought by this respondent under and pursuant to Chapter X of the Bankruptcy Act and which is now pending in the District Court of the United States for the Southern District of California, Northern

Division.

Jas. R. McBride, Attorney for Respondent.

STATE OF CALIFORNIA, County of Tulare, ss:

Ernest L. Daniells, being first duly sworn, deposes and says: That he is the president of the Board of Directors of

Lindsay-Strathmore Irrigation District, the respondent above and in the foregoing Special Return named and that he makes this affidavit for and on the behalf of the irrigation district. He has read the foregoing Special Return and knows the contents thereof and the same is true of his own knowledge except as to those matters therein stated to be upon information and belief and as to those matters he believes it to be true.

[fol. 75] Exhibit "F" to Return

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF TURARE

#### No. 27007

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased; Milo W. Bekins and Reed J. Bekins, as Trustees Appointed by the Will of Katherine Bekins, Deceased; James Irvine; J. R. Mason; James H. Jordan; C. A. Moss, and H. E. Curtis, Petitioners,

BOARD OF SUPERVISORS OF TULARE COUNTY and LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Irrigation District, Respondents

#### ORDER SUSPENDING PROCEEDINGS

On September 25th, 1937, the Special Return of the Lindsay-Strathmore Irrigation District, this day filed herein, came on regularly to be heard and the petitioners being represented by W. Coburn Cook, Esq., their attorney, and the above named irrigation district, by Jas. R. McBride, Esq., its attorney, evidence both oral and documentary was offered and received and it appearing therefrom that a bankruptcy proceeding has been commenced by the irrigation district in the District Court of the United States for the Southern District of California, Northern Division, wherein the same is now pending and which is entitled "In the matter of the Petition of the Lindsay-Strathmore Irri-

gation District, an insolvent taxing agency, for the confirmation of a Plan for the Composition and readjustment of its Debts' and numbered 4745 on the records and files of this Court, and it further appearing that such proceeding directly affects all of the outstanding bonded indebtedness of the district, including the bonds upon which the petitioners herein base their several and respective claims, in that the decree of that court in that bankruptcy proceeding confirming the plan will on the consummation thereof discharge [fol. 76] the irrigation district from all liability on all of its outstanding bonded indebtedness, and it further appearing that all of the allegations in the special return contained are true, and good cause appearing therefor, it is hereby and on the motion of Jas. R. McBride, Esq., the attorney for the district,

Ordered: That, until the termination of the proceeding now pending in the District Court of the United States for the Southern District of California, Northern Division, entitled "In the matter of the Petition of Lindsay-Strathmore Irrigation District, an insolvent taxing agency, for the confirmation of a plan for the Composition and readjustment of its Debts," and numbered 4745 on the records and files of that Court, any and all further acts or proceedings herein be and they are hereby suspended and no further acts or proceedings shall be done, had or taken, and this proceeding shall remain in abeyance and in the same status as

it now is, until that time.

[File endorsement omitted.]

[fol. 77] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

RETURN OF JAMES H. JORDAN SHOWING CAUSE WHY AN INJUNCTION SHOULD NOT ISSUE AND WHY AN INTER-LOCUTORY DECREE MAKING PLAN TEMPORARILY OPERATIVE SHOULD NOT BE ENTERED—Filed October 11, 1937

Comes new James H. Jordan and joins in the return of Milo W. Beline, et al., to the order to show cause issued

herein and adopts said return as his own, together with the points and authorities, and states further that he is also a creditor of the Lindsay-Strathmore Irrigation District; that he owns bonds of said irrigation district amounting to the sum of \$13,500.00, as described in the petition herein, and that he has an action pending in the Superior Court of Tulare County entitled "James H. Jordan, Plaintiff, vs. Lindsay-Strathmore Irrigation District, Defendant," No. 26668, in similar form to that described in the return of said Milo W. Bekins, et al., and that he also is a party to the cause of action pending entitled "Milo W. Bekins, et al., Plaintiffs, vs. Board of Supervisors of Tulare County, Defendants," No. 27007.

Wherefore, said James H. Jordan joins in the prayer and requests this Honorable Court to grant the prayer of the creditors Milo W. Bekins, et al., herein on their behalf and on his own.

W. Coburn Cook, Attorney for James H. Jordan.

Service and receipt of copy of the foregoing Return ad-

mitted this 11th day of October, 1937.

Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, James R. McBride, Attorneys for Lindsay-Strathmore Irrigation District.

[File endorsement omitted.]

[fol. 78] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

Proof of Claim-Filed October 11, 1937

STATE OF CALIFORNIA, City and County of San Francisco, ss:

James Irvine, being first duly sworn, deposes and says: That he is a creditor of Lindsay-Strathmore Irrigation District, the petitioner herein, and that he is the owner and holder of the following described bonds of said irrigation district, to-wit:

Bonds numbered 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 61, 62, 63, 64, 65, 66, 67, 202, 203, 266, 270, 271, in the total principal amount of \$18,500.00,

and that of said bonds some have matured to-wit: bonds in the sum of \$14,000.00, which said bonds became due and were presented to the Treasurer of the Lindsay-Strathmore Irrigation District for payment, as follows:

Bond No.	Date Due	Date Presented
44		Oct. 7, 1935.
45	1 66	66
46	44.	66
47		66
48	. 44	66
49	. 66	6.6
50	44	6.6
51	. 66	. 66
52	66	6.6
53		- 66
54		6.6
55	66	
56		66
57	. 16	
61	Oct. 1, 1936	Jan. 9, 1937.
62	. 66	66
,63		66
64		
65	46	66
66		. 66
67	**	- 20 66

[fol. 79] and payment demanded, and that the same are wholly unpaid and that the said matured bends bear interest at the rate of 7% from date of maturity, and that said creditor has not been notified that funds are available for payment thereof; that each of said bonds bear interest at the rate of 6% per annum, evidenced by interest coupons payable on January 1st and July 1st of each year; that said James Irvine is the owner of all of the coupons attached to said bonds, of which coupons in the amount of \$3,825.00

have matured and were presented to the treasurer for payment, together with interest thereon at the rate of 7% per annum from date of presentation to date of payment; that affiant by this proof of claim does not submit himself to the jurisdiction of this court except for the special purpose of objecting to the jurisdiction of this court.

James Irvine.

Subscribed and sworn to before me this 8th day of October, 1937. W. W. Healey, Notary Public in and for the City and County of San Francisco, State of California. My Commission expires August 29, 1941. (Seal.)

[File endorsement omitted.]

[fol. 80] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

AFFIDAVIT OF MAILING-Filed October 4, 1937

STATE OF CALIFORNIA, County of Los Angeles, 88:

Lillian Goodman, being duly sworn, deposes and says:

That she is, and at all times herein mentioned was, a citizen of the United States, residing in the City of Los Angeles, State of California, where the mailing herein referred to took place; that she is over the age of eighteen years and not a party to the within entitled cause or interested in the event thereof; that on the 25th day of September, 1937, affiant enclosed in envelopes copies of the attached Notice to Creditors, dated September 22nd, 1937, sealed the same and addressed them to the various creditors of said agency as shown by the books of said agency, and on said day deposited the said envelopes so addressed, with the postage thereon fully prepaid, in the United States Mail in the City of Los Angeles; that attached hereto

is a list of said creditors to whom said Notice to Creditors was mailed.

Lillian Goodman.

Subscribed and sworn to before me this 25th day of September, 1937. Lynne V. Buck, Notary Public in and for said County and State. (Seal.)

lb. 9/25/37.

[File endorsement omitted.]

(Here follows one photolithograph, side folio 81)

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Phoenix, Ariz

J. R. Mason 1920 Lake St. San Francisco,

Milo W. Bekins o'o Bekins Van 190 Otis St. San Francisco,

& Storage Reed J. Bekins o/o Bekins Van 8 190 Otis St. Wells Fargo Benk & Market at Montgome San Francisco, Cal

David F. Selby 375 - 15th St. Oakland, Calif.

Walter J.Selby 1161 Greenwich St. Sen Francisco, Cal

A. Heber Winder Trust for Eva A.P. 204 Loring Block, Riverside, Calif.

James H. Jordan 200 Loring Block, Riverside, Calif.

Jenes Irvine o/o Grooker First National San Francisco, Calif.

6th and Spring Stoom Los Angeles, Calif Line J. French, o/o Security Fil 6th and Spring

### [fol. 82] IN UNITED STATES DISTRICT COURT

No. 4575

#### [Title omitted]

Approaret of Mailing-Filed October 4, 1937

STATE OF CALIFORNIA, County of Los Angeles, 88:

Lillian Goodman, being duly sworn, deposes and says: That she is, and at all times herein mentioned was, a citizen of the United States, residing in the City of Los Angeles, State of California, where the mailing herein referred to took place; that she is over the age of eighteen years and not a party to the within entitled cause or interested in the event thereof; that on the 25th day of September, 1937, affiant enclosed in envelopes copies of the attached Order to Show Cause Why Injunction Should Not Issue And Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered, dated September 22nd, 1937, sealed the same and addressed them to the various creditors of said agency, as shown by the books of said agency, and on said day deposited the said envelopes so addressed, with the postage thereon fully prepaid, in the United States Mail in the City of Los Angeles; that attached hereto is a list of said creditors to whom said Order to Show Cause was mailed.

Lillian Goodman.

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CALL HALL THE PRINTED AND SUPPLIES.

Subscribed and sworn to before me this 25th day of September, 1937. Lynne V. Buck, Notary Public in and for said County and State. (Seal.) [fol. 83] IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

#### No. 4575

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGATION DISTRICE, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of its Debts

Order to Show Cause Why Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered

To the Creditors of the Lindsay-Strathmore Irrigation District, Petitioner in the Above Entitled Cause:

You and Each of You are Hereby Notified that the Lindsay-Strathmore Irrigation District has filed in the above entitled court and proceeding its duly verified petition alleging that it is insolvent and unable to pay its debts as they mature and that it desires to effect a plan for the composition and readjustment of its debts under the provisions of Chapter 10 of the National Bankruptcy Act as amended and that an order has been made and entered therein finding that said petition has been filed in good faith and approving said petition as properly filed and fixing a time and place for the hearing thereon, and good cause appearing to the court,

It is Hereby Ordered that you and each of you show cause, if any you have, upon Monday, the 11th day of October, 1937, at the court room of the above entitled court at the Post Office Building, in the city of Fresno, State of California, at the hour of 2:00 o'clock P. M. of said day, or as soon thereafter as counsel may be heard, why an order should not be made and entered herein enjoining and staying, pending the determination of said matter, the commencement or continuation of suits, actions or proceedings against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan as set forth in said [fol. 84] petition, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under such securities; and to also show cause, if any you have, why an interlocutory decree should not be entered herein ordering that the plan shall be temporarily operative

with respect to all securities affected thereby and that the payment of principal or interest, or both, of or on account of such securities shall be temporarily postponed or extended or otherwise adjusted in the same manner and upon the same terms as if such plan had been finally confirmed and

put into effect.

It is Further Ordered that notice of the issuance of this order to show cause and of the time and place fixed for hearing the same be given to the creditors of said petitioner by mailing a copy of this order to show cause, postage prepaid, to each creditor of the petitioner named in the petition, at the address of such creditor given in the petition, not less than ten days prior to the date fixed for the hearing of said order to show cause.

It is Further Ordered that pending the hearing of this order to show cause the creditors of said petitioner, and their agents or attorneys, and each of them, be and he is hereby enjoined and restrained from commencing or continuing any suit, action or proceeding against the petitioner or any officer or inhabitant thereof, on account of the securities affected by the said plan of composition and debt readjustment, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of any obligation under such securities.

Dated September 22nd, 1937.

Leon R. Yankwich, District Judge.

gk:m-9/21/37.

[fol. 85] Reconstruction Finance Corporation, Drainage, Levee and Irrigation Division, Hill Building, Washington, D. C.

Wm. J. Burns, Trustee, 32 Central Avenue, Phoenix, Arizona.

J. R. Mason, 1920 Lake St., San Francisco, California.

Milo W. Bekins, c/o Bekins Van & Storage Co., 190 Otis St., San Francisco, California.

Reed J. Bekins, c/o Bekins Van & Storage Co., 190 Otis St., San Francisco, California.

Wells Fargo Bank & Union Trust Co., Market at Montgomery, San Francisco, Calif.

David F. Selby, 373 - 13th St., Oakland, Calif.

Walter J. Solby, 1161 Greenwich St., San Francisco, Calif.

A. Heber Winder, Trust for Eva A. Parrington Trust, 204 Loring Block, Riverside, Calif.

James H. Jordan, 200 Loring Block, Riverside, Calif.

James Irvine, c/o Crocker First National Bank of San Francisco, San Francisco, Calif.

Lina J. French, Testtr., c/o Security First National Bank, 6th and Spring Sts., Les Angeles, Calif.

C. A. Moss, 532 N. Highland Ave., Los Angeles, Calif. Lynn Atkinson, c/o Call and Murphy, Attorneys at Law, 514 Pacific Mutual Bldg., Los Angeles, Calif.

[File endorsement omitted.]

(Here follow two photolithegraphs, side folios 86-87 and 88)

IN UNITED STATES DISTRICT COUR AFFEDAVIT OF PUBLICATION

STATE OF CALIFORNIA

deposes and says: That seid County of Tuler times here Tulare, Creditsaid the VISALIA three copy, on the published in all the of week for follows: annexed County printer a daily new printed and published of tisements printed Morley M.Maddor, al circulation said newspaper ors, of which margin hereof which printed mentioned in mentiomed TIMES-DELTA. as such has duly newspaper, he is now mentioned Visalia, that he Tulare, Sunday being (3)

edition or Septsuch publicatio Octoday of seid of 15th September 24, Morley M.Meddox ... and October 15, the 24th day paper, and not in supplemental end ing on 1937, Commencing ember, 1937, and October thereof. ber 1,

subspribed and sworn to before me Lith day of October, 1937,

Notary Public in and for the County. of Tulare, State of California. 86-87

(SEAL)

## G. ARTZ

# NOTICE TO CREDITORS

in the above entitled matter, of which the annexed is a printed copy, was published in said newspaper

WEEKS, AND ON THE FOLLOWING DAYS, TO WIT: September 23, and 30th October 7, and 14th, All in 1937.

ARTZ

October 14th a

19 37.

ROE

SEAL state of California.

thent. That the petition or secondary girath. That the petition or and the days litrathence in Irrigation Discussion on and readjustment of its debte vest by the court as properly fled and Bankruptcy Law as Anneded in a lear of the court duly entered in asid every file of the State of Children and been of the said day, and the secondary. Friday, the 3rd day of cember, 1937, at the hour of 1by entered in asid east Ortics Building, in the City of an and place, at at which said time and place, where, at the time and place, at at which said time and place, and debt readjustment as set forth in debtition as well, as any changes modifications thereof which may be proper and for the farther purpose hearing any creditor of the Discussion and plan of debt readjustment martin and debt readjustment and debt of any centering and debtered to be accepted in an equal to the same and receive in experient of such holders of all announts of each such bond under the presentation of such bond or any at mount to each such bond or any at wrenant coupon as provided by set ion 59.58 Cents for each dollar of the principal and interest and an equal to a such bond or any at wrenant coupon as provided that if an anount to be paid on such bond to any at wrenant coupon as provided that if an anount to be paid on such bond to any at wrenant coupon as provided that if an anount to be paid on such bond to all interest and the mare and are an anount to be paid on such bond to all annount to be paid on such bond to any at wrendered with the bond or any at wrendered with the bond or any at aurendered with the bond or any at a provided that it as a provided with the annount to be paid on such bond to a surrendered with the such missing coup, as a such bond and and to be annount to be paid on such bond or any at a surrendered with the such missing coup,

[fol. 89] IN UNITED STATES DISTRICT COURT

No. 4575

[Title omitted]

CERTIFICATE OF JUDGE-Filed October 11, 1937

To the Honorable Homer S. Cummings, Attorney General:

The undersigned, Leon R. Yankwich, Judge of the United States District Court, Southern District, pursuant to the provision of Act No. 352, 75th Congress, entitled "An Act to provide for intervention by the United States, direct appeals to the Supreme Court of the United States, and regulation of the issuance of injunctions, in certain cases involving the constitutionality of Acts of Congress, and for other purposes", approved August 24, 1937, do hereby certify:

That on September 21, 1937, the Lindsay-Strathmore Irrigation District, an insolvent taxing agent, petitioner in the above proceeding, filed a petition for confirmation of plan for composition and readjustment of its debts under Public Act No. 302, 75th Congress, approved August 16, 1937, and entitled, "An Act to amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto", before me as Judge of said Court.

Upon the filing of said petition, I approved the same as properly filed and ordered notice to creditors to be given of the hearing of said petition on December 3, 1937. On [fol. 90] October 2, 1937, certain owners of bonds of the Lindsay-Strathmore Irrigation District gave notice of motion to dismiss the petition.

Said motion draws in question the constitutionality of Public Act No. 301.

As neither the United States nor any officers thereof, nor any of its agents or employees, are a party to said proceeding, I hereby certify these facts in conformity with the provisions of the Act above named.

Authority is hereby granted to the United States to intervene and become a party for presentation of evidence and

argument upon the question of the constitutionality of such Act.

Done in open court -his 11th day of October, 1937. Leon R. Yankwich, United States District Judge.

[fol. 91] [File endorsement omitted.]

[fol. 92] IN UNITED STATES DISTRICT COURT

No. 4575. Bkcy.

[Title omitted]

Petition of Intervention—Filed November 8, 1937

To the Honorable the District Court of the United States for the Southern District of California, Northern Division:

The petitioner respectfully shows:

#### T

That on or about the 21st day of September, 1937, the Lindsay-Strathmore Irrigation District filed a petition in the above entitled court for confirmation of a plan of composition and readjustment of its debts under Chapter 657 of Public 302, 1st Session 75th Congress, adopted August 16, 1937, entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplemental thereto."

#### П

That on or about the 11th day of October, 1937, Milo W. Bekins and Reed J. Bekins, as trustees for owners of bonds of the Lindsay-Strathmore Irrigation District filed a motion in the above entitled court to dismiss the petition filed by the Lindsay-Strathmore Irrigation District; that one of the grounds set forth in the motion to dismiss is that the Bankruptcy Act, adopted August 16, 1937, under which the said petition of Lindsay-Strathmore Irrigation District was filed, is unconstitutional.

[fol. 93] III

That under Public 352, Chapter 754, 1st Session 75th Congress, was enacted:

"That whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act."

# IV

Petitioner refers to all the allegations contained in the petition filed by Lindsay-Strathmore Irrigation District in the above entitled matter and makes each and all of said allegations a part of its petition in intervention as if fully set out herein.

#### V

That petitioner is ready and willing and hereby offers to contribute to the expenses of the within suit for court costs its just proportion thereof, to the extent necessary for proper presentation of facts and law relating to the constitutionality of the Bankruptcy Act attacked by respondent in the motion to dismiss.

[fol. 94] Wherefore, petitioner prays an order be made allowing petitioner to intervene; that motion to dismiss be

denied; and for such other relief as is meet and just in the

premises.

Ben Harrison, United States Attorney; Leo V. Silverstein, Asst. United States Attorney; Henry A. Julicher, Attorney, Department of Justice, of Counsel.

LVS-gls.

[fol. 95] Duly sworn to by Ben Harrison. Jurat omitted in printing.

[fol. 96] [File endorsement omitted.]

[fol. 97] IN UNITED STATES DISTRICT COURT

No. 4575. Bkey.

[Title omitted]

ORDER ALLOWING INTERVENTION—Filed November 8, 1937

Upon reading the verified petition to intervene of the United States of America, and good cause appearing therefor,

It is Hereby Ordered that permission to the United States of America to intervene in said action is hereby granted.

Dated: November 8, 1937.

Leon R. Yankwick, United States District Judge.

LVS-gls.

[fol. 98] [File endorsement omitted.]

[fol. 99] IN UNITED STATES DISTRICT COURT

Present: the Honorable Leon R. Yankwich, District Judge.

No. 4575. Bkcy.

[Title omitted]

MINUTES OF HEARING—November 8, 1937

This matter coming on for hearing on (1) return of order of September 22, 1937, to show cause why an order should

not issue staying and enjoining suits, actions or proceedings against the debtor, and (2) hearing on motion of Milo W. Bekins and Reed J. Bekins, trustees, et al. to dismiss petition; Guy Knupp and James R. McBride, Esq., appearing for the debtor; W. Coburn Cook, Esq., appearing for Milo W. Bekins, et al.; Mr. Julius, of the Department of Justice, and Ben Harrison, United States Attorney, appearing for the United States of America as Intervenor (petition and order allowing intervention having been filed this day);

Attorney Cook moves to strike petition and order allowing intervention of the United States of America, which motion is denied, with exception noted to debtor, and Attorney Cook presents return to Order to Show Cause dated September 22, 1937, and also presents motion of Milo W. Bekins, et al. to dismiss petition, and files points and author-

ities, whereupon,

Guy Knupp, Esq., argues in reply to motion to dismiss and files authorities; Ben Harrison, Esq., argues in opposition to motion to dismiss and files authorities; W. C. Cook, Esq., files certified copy of Judgment of Dismissal of case No. 4005-Bkcy. as part of return to order to show cause; J. R. McBride, Esq., argues further for the Debtor; W. C. Cook, Esq., argues further; and the above petition and motion are thereupon submitted for decision.

14/299.

[fol. 100] Exhibit 4575. Bkcy. Filed Nov. 8, 1937, at 7 min. past 1 o'clock P. M. R. S. Zimmerman, Clerk, by Louis J. Somers, Deputy.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DIS-TRICT OF CALIFORNIA, NORTHERN DIVISION

No. 4005. In Bankruptey.

In the Matter of Lindsay-Strathmore Instruction District, An Insolvent Taxing District

# JUDGMENT OF DISMISSAL

In this cause a Decree Confirming Plan of Readjustment, Authorizing and Directing Procedure for Consummation of said Plan and Enjoining Attempts \*\* Enforce Claims For

or Under Outstanding Bonds, Except in Accordance with said Plan, having been rendered and entered by this court May 8, 1936, and an appeal having thereafter been taken by Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as executors of the will of Katharine Bekins, deceased, J. R. Mason, James H. Jordan, James Irvine, A. Heber Winder, trustee for Eva A. Parrington Trust, and C. A. Moss, to the United States Circuit Court of Appeals. for the Ninth Circuit, and the said cause having been reversed by the United States Circuit Court of Appeals, for the Ninth Circuit, holding Sections 78, 79 and 80 of the Bankruptcy Act of 1898, as amended, unconstitutional, and the proceedings taken thereunder void, and a mandate of the said United States Circuit Court of Appeals, for the Ninth Circuit, having come down to this court reversing the judgment entered herein.

It is Ordered, Adjudged and Decreed that the Decree Confirming Plan of Readjustment, Authorizing and Directing Procedure for Consummation of said Plan and Enjoining Attempts to Enforce Claims For or Under Outstanding [fol. 101] Bonds, Except in Accordance with said Plan, entered herein as aforesaid, be and the same hereby is vacated, annulled, set aside and declared void and ineffective for any purpose, and the petition of the Lindsay-Strathmore Irrigation District herein for confirmation of plan of readjustment of debts is dismissed and all orders restraining the creditors of said district from asserting or prosecuting their claims against said Lindsay-Strathmore Irrigation District are vacated, and judgment is entered herein in favor of the appellants and respondents, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as executors of the will of Katharine Bekins, deceased, J. R. Mason, James H. Jordan, James Irvine, A. Heber Winder, trustee for Eva A. Parrington Trust, and C. A. Moss, for their costs in accordance with said mandate of the Circuit Court of Appeals in the amount of \$- and . for their costs incurred in this court in the amount of \$79.46/100 against the petitioner and appellee. Lindsay-Strathmore Irrigation District.

Dated July 26, 1937.

Geo. Cosgrave, United States District Judge.

A True Copy. Attest, etc. R. S. Zimmerman, Clerk U. S. District Court, Southern District of California, by Francis E. Cross, Deputy. (Seal.)

(Endorsed:) Filed 4:50 P. M., Jul. 26, 1937. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy.

[fol. 102] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

No. 4575. Bkcy.

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGA-TION DISTRICT, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of Its Debts

# Appearances:

For Petitioner: Messrs. Mitchell, Silberberg, Roth & Knupp, of Los Angeles, California, James R. McBride.

For Respondents: W. Coburn Cook, of Turlock, California.

For Intervenor: Ben Harrison, United States Attorney, Los Angeles, California; Henry A. Julicher, Attorney, Department of Justice, Washington, D. C.

Opinion—Filed November 13, 1937

[fol. 103] YANKWICH, District Judge:

Lindsay-Strathmore Irrigation District, which we shall call "the district", is an irrigation district, organized under the "California Irrigation District Act", approved March 31, 1897, and the Acts amending and supplementing it. It comprises approximately 15,260 acres of land located in Tulare County, California, and is organized for the purpose of constructing, improving, maintaining and operating improvement projects and works devoted chiefly to the improvement of lands within its boundaries for agricultural purposes. Alleging that it is a taxing agency and instrumentality within the meaning of Chapter X of the Bankruptcy Act, approved August 16, 1937, it filed on September 21, 1937, a "petition for confirmation of a plan for composi-

tion or re-adjustment of its debt". The insolvency arises by reason of its inability to meet its obligations as to two bond issues issued by it under the provisions of the California Irrigation District Act. Attached to the petition is a plan of composition and re-adjustment, accepted by the petitioner and creditors owning approximately 87 per cent in amount of the securities affected by the plan, who have consented to the filing of the petition. It is aimed to pay in cash to the holders of the bonds a sum equal to 59.978 cents for each dollar of the principal amount of each bond, in full payment, discharge and satisfaction of all amounts of principal and interest due on such bond. The payment is to be made out of a loan which the Reconstruction Finance [fol. 104] Corporation has authorized and agreed to make to the district. Upon the filing of the petition, I entered an order approving it as properly filed under Chapter X, and set December 3, 1937, as the time and place for the hearing on the petition. On September 30, 1937, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, and of the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington, trust, and C. A. Moss gave notice of motion to dismiss the petition, upon the ground, among others, that the Court was without jurisdiction of the subject matter of the proceeding and that Chapter X of the Bankruptcy Act, Sections 81 to 84 inclusive, is unconstitutional and void. The matter coming up for hearing on October 11, 1937, I certified to the Attorney General the fact that the constitutionality of the Act was drawn in question, under the provisions of the judiciary reform Act approved August 24, 1937, (Public No. 352, 75th Congress, Chapter 754), and allowed the Government to intervene and defend the Act's constitutionality.

Chapter X, Sections 81 to 84 of the Bankruptcy Act, under which the petition was filed, were intended to supplant Section 80 of the Act, which was stricken down by the decision of the Supreme Court in Ashton v. Cameron County Water District (1936) 298 U. S. 513.

The presumption in favor of constitutionality calls for a ruling in favor of the validity of an Act of the Congress and commands us to resolve all doubts in favor of validity unless the contrary is made to appear beyond a reasonable [fol. 105] doubt. In effect, this means that we must sustain

the new Act unless the decision in Ashton v. Cameron County District, supra, compels a different conclusion. This is especially true when we consider an Act passed to replace an Act invalidated by our highest court. (See: Wright v. Vinton Branch (1937) 300 U.S. 440). It is not necessary to enter into a detailed comparison of the two Acts. While the aim of the old Act was "re-adjustment" of debts of insolvent public agencies named in it, the new Act aims at "composition" of the debts of the agencies coming under it, insolvency existing. Both plans contemplate a voluntary. petition containing a plan approved by a certain number of its creditors,-thirty to fifty-one per cent in the old Act, fifty-one per cent in the new Act, the preliminary approval by the court of the petition, due notice of hearing for final confirmation of the plan of reorganization by the Court, if approved by more than a majority of the creditors, the percentage varying in the old Act from fifty-one upward and being fixed at two-thirds in all cases in the new Act. The confirmation of the plan in both instances and the payment of the consideration, under both enactments, has the effect of discharging the debtor from all debts or liabilities covered by the plan. The new Act disowns, as did the old one, any intention to interfere with the exercise of State governmental authority. Subdivision (i) of Section 84 reads:

"(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political sub[fol. 106] division of or in such State in the exercise of its political or governmental powers, including expenditures thereof."

The agencies to which the old Act applied included:

"(a) Any municipality or other political subdivision of any State, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement or other districts (hereinafter referred to as a 'taxing district')". (Bankruptcy Act, Section 89(a).) The new statute is made to apply to

"(1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such [fol. 107] as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public school or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality;" (Bankruptcy Act, Chapter X, Sec. 81).

The scope of both Acts is limited as to time,—the old Act expiring on January 1, 1940, the new Act on June 30, 1940. In the Report of the Committee on the Judiciary of the House of Representatives, on the Act, its aim is stated:

"The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to, and believes that H. R. 5969 is not invalid or contrary to the reasoning of the majority opinion in the 5-to-4 decision. The act which was declared unconstitutional designated the instrumentalities included in its provisions as political subdivisions of the State, and the Su-[fol. 108] preme Court determined that it was beyond the power reposed in Congress by article I, section 8, clause 4, of the Federal Constitution, 'To establish " uniform laws on the subject of bankruptcies', to pass an act to interfere with the States in the control of their fiscal affairs.

"The bill here recommended for passage expressly avoids any restriction on the powers of the States or their

arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill,

"As the statute which was declared unconstitutional was held to be within the subject of bankruptcies and uniform in its application, a fortiori, the present bill is adequately related to the general subject of bankruptcies, and does not conflict with the fifth amendment of the Federal Constitution as to due process of law." (Report No. 517, 75th

Congress, First Session.)

[fol. 109] It is evident that the Committee assumed that the old statute had been declared unconstitutional merely because the Congress had used the generic phrase "any municipality or other political subdivision of any state". The new Act seeks to overcome this infirmity by enumerating specifically certain tax instrumentalities without grouping them under a generic title.

But the old Act included specifically irrigation districts, as does the new. And the new Act includes specifically

municipalities as did the old.

The new Act attempts to draw a distinction between taxing bodies which are true governmental subdivisions,—such as counties, cities, villages, boroughs, and those which are government agencies of limited scope or between what are strictly municipal corporations and public or quasimunicipal corporations, of more limited scope. The distinction is made often in public law, especially in dealing with the power to tax and liability for tort, between strictly governmental and proprietary functions. (See: Helvering v. Powers (1934) 293 U. S. 214; Ohio v. Helvering (1934) 292 U. S. 360; Brush v. Commissioner (1937) 300 U. S. 352; Yolo v. Modesto Irrigation District (1932) 216 C. 274; 13 P(2) 908).

But a governmental body, does not lose its character as such merely because it may engage in activities of a proprietary nature. If it is an agency of the state for the performance of certain functions, the fact that the functions are limited does not alter its status. An agency of the state for the performance of governmental functions it still remains. Ultimately, the test is, Does it have the [fol. 110] attributes of sovereignty? Do its activities constitute a public as distinguished from a private enterprise? In carrying out its functions, does it exercise that great prerogative which belongs to sovereignty only,—the power to tax and assess property within its boundaries for the upkeep of its activities? If it does, then it is a state agency or instrumentality, although it does not fit into any of the old rubrics under which governmental agencies were classified in less complex days,—villages, towns, cities, boroughs, and the like.

As I read the decision in Ashton v. Cameron County Dis-

trict supra, it is grounded upon this proposition.

The gist of the majority opinion is contained in the state-

"Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair state powers—pass laws inconsistent with the idea of sovereignty." (Ashton v. Cameron etc 297 U. S. 513, 531.) (Italics added.)

A dissenting opinion often helps clarify the import and

meaning of the majority opinion.

The minority opinion does not seek to draw any distinction between public or quasi-municipal bodies and true state subdivisions. As the court was not dealing with a munic-[fol. 111] ipality, but with a water and irrigation district, it is quite certain that the minority represented by the Chief Justice, Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo, who wrote the opinion, would have based their dissent upon the proposition that, granted the principles of the majority opinion, the water district, because of its limited powers, was not a political subdivision of the state. They did not do this. Instead, they asserted boldly that, while immunity from federal bankruptcy acts would attach to the state, it should not attach to local governmental units. Mr. Justice Cardozo says:

"There is room at least for argument that within the meaning of the Constitution the bankruptcy concept does not embrace the states themselves. In the public law of the United States, a state is a sovereign or at least a quasisovereign. Not so, a local governmental unit, though the state may have invested it with governmental power. Such a governmental unit may be brought into court against its will without violating the Eleventh Amendment. Lincoln County v. Luning, 133 U. S. 529; Hopkins v. Clemson College, 221 U. S. 636, 654. It may be subjected to mandamus or to equitable remedies. See, e. g. Norris v. Montezuma Valley Irrigation District, 248 Fed. 369, 372; Tyler County v. Town, 23 F. (2d) 371, 373; 'Neither public corporations nor political subdivisions are clothed with that immunity [fol. 112] from suit which belongs to the State alone by virtue of its sovereignty'. Hopkins v. Clemson College supra," (Ashton v. Cameron Co. etc. supra, at 542). (Italics added.)

It is evident to me that the decision was not grounded upon the fact that the power of the Texas Legislature to establish water districts was derived from the general constitutional provision permitting the creation of political subdivisions of the state with power to sue and be sued, issue bonds, levy and collect taxes. The majority opinion intended to apply the limitation to all "taxing agencies" which exercise, under the authority of the state, the attributes of sovereignty. That this is the import of the decision is also shown by what the Court says about it in Brush v. Commissioner, 300 U. S. 352.

There the Court was considering the immunity of state governmental agencies from federal taxation. It held that a municipality in supplying water to its inhabitants engaged in a governmental function which brought immunity from federal income tax to an engineer employed in its Water Department. Speaking of the scope of Ashton v. Cameron

County District, supra, the Court said:

"We recently have held that the bankruptcy statues could not be extended to municipalities or other political subdivisions of a state. Ashton v. Cameron County Water District, 298 U. S. 513. The respondent there was a water-improvement district organized by law to furnish water for [fol. 113] irrigation and domestic uses. We said (pp. 527-

528) that respondent was a political subdivision of the state 'created for the local exercise of her sovereign powers \* Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution.' In support of that holding, former decisions of this court with respect to the immunity of states and municipalities from federal taxation were relied upon as apposite. The question whether the district exercised governmental or merely corporate functions was distinctly in issue. The petition in bankruptcy alleged that the district was created with power to perform 'the proprietary and/or corporate function of furnishing water for irrigation and domestic uses \* \* \* ' The district judge held that the district was created for the local exercise of state sovereign powers; that it was exercising 'a governmental function'; that its property was public property; that it was not carrying on private business, but public business. That court, having denied the petition for want of jurisdiction, the district submitted a motion for a new trial in which it assigned. among other things, that the court erred in holding that petitioner was created for the purpose of performing func-[fol. 114] tions, 'for the reason that the Courts of Texas, as well at the other Courts of the Nation, have uniformly held that the furnishing of water for irrigation was purely a proprietary function \* \* \* Substantially the same thing was repeated in other assignments of error. In the petition for rehearing in this court, the district challenged our determination that respondent was a political subdivision of the state 'created for the local exercise of her sovereign powers,' and asserted to the contrary that the facts would demonstrate that 'respondent is a corporation organized for essentially proprietary purposes.' . It is not open to dispute that the statements quoted from our opinion in the Ashton case were made after due consideration, and the case itself decided and the rehearing denied in the light of the issue thus definitely presented. Compare Bingham v. United States, 296 U.S. 211, 218-219" (Brush v. Commissioner, 300 U.S. 352, 368-369). (Italics added.)

(And see: Southern Sierras Power Company v. Imperial Irrigation District (1937) 87 Fed. (2) 355.)

If is clear that the Court did not draw any line between governmental functions exercised by municipal corporafol. 115] quasi-municipal corporations of more limited scope. The distinction it drew was between governmental and corporate functions. Corporate functions are functions which may be exercised by any private corporate body.

They do not partake of a public nature.

Public functions, performed by an agency created by the State, whose officers are elected by voters having the qualifications of general electors of the State, and which exercise the powers of eminent domain and taxation,—the latter two among the two most important attributes of sovereignty and without which there could be no sovereignty,—are

clearly governmental.

The irrigation district, which seeks relief under this enactment, is of this character. It is one of the instrumentalities of the State, which fall under the interdict of Ashton v. Cameron, etc., supra. Since the enactment in 1887, of the first Irrigation District Act in California, commonly known as the "Wright Act," California courts have had many occasions to determine the character of the districts created under it. So has the Supreme Court of the United States in upholding the Act. A California irrigation district, while not a political subdivision of the State, is a public corporation for municipal purposes and its officers are public officers of the state. (See: Fallbrook Irrigation District v. Bradley (1896), 164 U. S. 112; In re Madera Irrig. Dist. (1891), 92 C. 296, 28 P. 272; Lindsay-Strathmore Irrig. Dist. v. Superior Court (1920), 182 C. 315; 187 P. 1056; Turlock Irrig. Dist. v. White (1921), 186 C: 183; 198 P. 1060; Crawford v. Imperial Irrig. Dist. (1927), 200 C. 318; 253 P. 726; Wood v. Imperial Irrig. Dist. (1932), 216 C. 748; 17 P(2) 128; Yolo v. Modesto Irrig. Dist. (1932), 216 C. 748; 13 P(2) 908.) The case last cited con-[fol. 116] tains one of the latest declarations of the Supreme Court of California on the subject. An irrigation district is there denominated "a quasi-municipal corporation." In Morrison v. Smith Brothers, Inc. (1930) 211 C. 36, 40, 293 P. 53, irrigation districts are called "state agencies performing a governmental function:" In Sutro Heights Land Co. v. Merced Irrig. Dist. (1931) 211 C. 670, 690, 296 P. 1098, an irrigation district is referred to as "an agency of the state, and the use to which water owned and controlled by it is put to a public use." The same court, in order to give to

irrigation districts immunity from liability for torts, considers them state agencies. (See: Whiteman v. Anderson-Cottonwood Irrigation District (1922) 60 C. A. 234, 212 P. 706; Nissen v. Cordua Irrig. Dist. (1928) 204 C. 545; 269 P. 171; Morrison v. Smith Bros. (1930) 211 C. 36; 293 P. 53; Yolo v. Modesto Irrig. Dist., supra); (And on the general nature of instrumentalities of this character, as state agencies performing functions of government, see Houck v. Little River Drainage District, (1915) 239 U. S. 254).

Irrigation in California is "a public use" and the power of eminent domain may be exercised in behalf of it. (Constitution of California, Art. I, Sec. 14; California Code of

Civil Procedure, Sec. 1241; Stats. 1911, p. 1407.)

The manner in which irrigation districts are created, the fact that they are called into being by an act of the Supervisors of the County in which the major part of the lands are located, upon petition of the property owners, that the officers of the district are elected by a vote not of property [fol. 117] owners, but of all electors within the district, the fact that the officers are subject to recall, as are all other officers of the State, the fact that before bonds are issued by the Board of Directors of an irrigation district for the purpose of constructing or acquiring works or other property, the plans for such works and the amount of the bonds to be issued, must be approved by the California Districts Securities Commission, consisting of the State Attorney General, the State Engineer, the Superintendent of Banks and two other members appointed by the Governor of the State, who must report on the feasibility of the project, these, and other facts, serve to show the character of an irrigation district as a public instrumentality and agency of the State, subservient to it. (Stats. 1897, p. 254; Stats. 1931, p. 2263.)

Within their limited scope, irrigation districts exercise the powers of sovereignty. Like sovereigns, they enjoy immunity from liability for torts. They owe their existence to the State, and exercise state functions within their area, just as effectively as municipalities. Clearly, they are of the same type as the water and irrigation company which was before the Supreme Court in Ashton v. Cameron County Water District, supra, and of which the Court said:

"that the right to borrow money is essential to its operation. Houck v. Little Biver Drainage District, 239 U. S. 261-263; Perry v. United States, 294 U. S. 331. Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution." (Ashton v. Cameron, etc. supra at 528.)

[fol. 118] I feel compelled by this decision to hold that the new enactment, Chapter X, of the Bankruptcy Act, insofar as it applies to irrigation districts of the type of the petitioner, is constitutionally vulnerable, as was the old.

As a student, exercising private judgment, I agree with the conclusion of the dissenters that immunity from interference through federal bankruptcy laws, even if applicable to states, should not be extended to state instrumentalities, whether they be municipal, quasi-municipal or public corporation. However, as a judge of a lower court, I cannot exercise private judgment, but must follow the opinion of the majority, which, as I read it, extends the immunity to all governmental agencies created by a State for the performance of public functions.

The motion to dismiss will be granted.

Exception to the debtor and the intervenor.

Dated this 13th day of November, 1937.

Leon R. Yankwich, United States District Judge.

[fol. 119] [File endorsement omitted.]

[fol. 120] IN UNITED STATES DISTRICT COURT

No. 4575. Bkcy.

ORDER GRANTING MOTION TO DISMISS-November 13, 1937

This matter having been heretofore submitted for decision on the motion to dismiss.

The motion of certain creditors to dismiss is granted on the ground the law is unconstitutional, and the restraining order is discharged.

Exception to debtor and intervenor. Opinion filed.

14/306.

[fol. 121]

### IN UNITED STATES DISTRICT COURT

# [Title omitted.]

PROOF OF CLAIM-Filed November 26, 1937

H. A. Mulligan, upon oath, says that he is Treasurer of the Reconstruction Finance Corporation, an agency of the United States Government, having its principal place of business in Washington in the District of Columbia, and that he is duly authorized to make this proof, and says that the Lindsay-Strathmore Irrigation District of Lindsay, in the State of California, which has heretofore filed a petition for the Composition and Readjustment of its Debts, was at and before the filing of the petition, and still is, indebted to the Reconstruction Finance Corporation in the amount of Twelve Thousand Five Hundred Dollars (\$12,-500), consisting of:

.\$10,000 principal amount of Lindsay-Strathmore Irrigation District First Issue 6% Bonds, dated July 1, 1916, as

follows:

Number	111	Maturit	y Date	Deno	mination	
580		July 1	1936		\$500	q
				noyle	44	
				1/12		
				1/10	166	
1649/1652			•		64	
1735/1736		July 1	, 1945		44	
1784			5,7-4		. 44	
1788/1789			1. /		"	
1792		. 41	1/		4.6	
					", and	

\$2,500 principal amount of Lindsay-Strathmore Irrigation District Second Issue 6% Bonds, dated October 1, 1918, as follows:

Number	Maturity Date	Denomination	
183/187	October 1, 1942	\$500;	

that no part of the debt has been paid and that there are no set-offs or counter-claims to the same; and that said Corporation has not, nor has any person by its order, or to the knowledge or belief of this deponent, for its use, had or received any manner of security for said debt whatever. [fol. 122] That this Corporation has heretofore made a loan to W. J. Burns, Trustee, Phoenix, Arizona, in the amount of \$736.838.27, which loan is evidenced by his collateral note, dated April 29, 1937, payable on demand with 4% interest from date until paid, and secured by \$1,018,000 principal amount of Lindsay-Strathmore Irrigation District First Issue 6% bonds, dated July 1, 1916, and \$212,000 principal amount of Lindsay-Strathmore Irrigation District Second Issue 6% Bonds, dated October 1, 1918, the bonds of both issues having the numbers, maturities and denominations as set forth in a schedule thereof attached to the proof of claim filed in this cause by W. J. Burns, Trustee, the owner and holder of the legal title to such bonds; and that no part of the debt evidenced by such collateral note of W. J. Burns, Trustee, has been paid and that there are no set-offs or counter-claims to the same: and that said Corporation has not, nor has any person by its order, or to the knowledge or belief of this deponent, for its use, had or received any manner of security for said debt whatever.

That the Reconstruction Finance Corporation, holder as pledgee of \$1,230,000 aggregate unpaid principal amount of bonds of the petitioner, as mentioned in the next preceding paragraph, hereby authorizes W. J. Burns, Trustee, as owner and holder of the legal title to such bonds, to file in these proceedings his proof of claim against the petitioner for the aggregate unpaid principal amount of such bonds; provided, however, such consent is given upon the express condition that all sums and amounts received by him through or under the Composition proposed by the petitioner shall be applied to the payment of his indebtedness evidenced by his above-mentioned collateral note, or so much thereof as may be necessary for such purpose.

H. A. Mulligan, Treasurer, Reconstruction Finance

Corporation.

Subscribed and sworn to before me this 26th day of October, 1937. Martha LaFitte Ray, Notary Public. My commission expires July 15, 1941. (Seal.)

[fol. 123] [File endorsement omitted.]

### [fol. 124] IN UNITED STATES DISTRICT COURT

### Title omitted]

PROOF OF CLAIM-Filed November 26, 1937

Comes now W. J. Burns, Trustee, of Phoenix, in the County of Maricopa in the State of Arizona, on this the 26 day of October, A. D. 1937, and upon his oath says:

That Lindsay-Strathmore Irrigation District, of Lindsay. in the County of Tulare, in the State of California, which has heretofore filed in the above captioned Court a petition for the composition and readjustment of its debts, was at and before the filing of the petition and still is indebted to the deponent in the sum of \$1,230,000.00, as evidenced by the aggregate unpaid principal amount of the outstanding bonds of the petitioner, the legal title to which is now and was at the time of filing such petition vested in deponent, which bonds are more particularly described in the schedule attached hereto and made a part hereof by reference: that no part of the debt has been paid and that there are no set-offs or counter-claims to the same: that such bonds are payable out of taxes levied and to be levied against the lands within petitioner and are on a parity with other bonds of the issues of which they are part; and that otherwise the deponent has not nor has any person by his order or to his knowledge or belief, or for his use, had or received any manner of security for such debt whatever.

That the deponent has heretofore as Trustee, but not individually, borrowed from the Reconstruction Finance Corporation, an agency of the United States government, the sum of \$736,838.27, evidenced by his collateral note in the same amount dated April 29, 1937, payable to the Reconstruction Finance Corporation on demand, with four per centum (4%) interest thereon from date until paid; that as collateral security for the payment of such note and the interest thereon deponent has pledged and delivered to the Reconstruction Finance Corporation \$1,230,000.00 aggregate unpaid principal amount of bonds of the petitioner, [fol. 125] as more particularly described in the schedule attached hereto and made a part hereof by reference; that no part of the principal of such note has been paid; that the deponent acknowledges that he is now indebted as trustee, but not individually, to the Reconstruction Finance Corporation in the full amount as evidenced by his collateral note; that he expressly agrees and consents that all sums received by him through or under the composition and debt readjustment proposed by the petitioner, or so much thereof as may be necessary to pay in full the principal of and interest on such note shall be applied and used exclusively for that purpose; and that the Reconstruction Finance Corporation has heretofore filed in this proceeding its written consent to the filing by deponent of this, his proof of claim, against the petitioner.

W. J. Burns, Trustee.

Subscribed and sworn to before me this 26 day of October, 1937. R. S. Lamb, Notary Public. My commission expires Jan. 26, 1939.

# [fol. 126] Schedule of Bonds Held as Collateral

# First Issue—Dated July 1, 1916

\$1,000 Denomination	
Bond Numbers Total Prin	h. Amt.
258-260	3,000
337-341, 346-353, 362-364	16,000
342-345, 357-361	9,000
421-429, 431, 432, 434-438, 442-449, 451-453	27,000
430, 450	2,000
527-531, 533, 539, 547-552, 554-557	17,000
542-544	3,000
631-639, 643, 651-657, 662	18,000
640-642, 644-646, 658, 660, 663-665	11,000
661	1,000
736, 737, 739-748, 758-761	16,000
738, 753-757, 762-770	15,000
841-852, 858-860, 862, 868, 871-879, 881	27,000
853-857, 861, 863-867, 880	12,000
968, 976-980, 983-990, 992-994, 998-1008	28,000
967, 969-975, 991	9,000
1097-1106, 1108-1115, 1118-1120, 1126-1130, 1132-	10.01
1134	29,000
1093-1096, 1107, 1116, 1117, 1121-1125, 1131	13,000
1229, 1231, 1232, 1234, 1237, 1239, 1240, 1242-1249,	tract
1251-1256, 1258-1260	24,000
1219-1228, 1230, 1233, 1241	13,000

	1345-1349, 1254, 1355, 1357, 1358, 1361, 1365-1368, 1370, 1371, 1379-1391	29,000
	1350-1353, 1356, 1359, 1360, 1362-1364, 1369, 1392,	25,000
	1393	13,000
	1492-1496, 1500-1509, 1520, 1523, 1525, 1528-1546	37,000
	1497-1499, 1510, 1512-1519, 1526, 1527, 1547	15,000
	1692	1,000
	1662-1667, 1670-1674, 1678, 1682, 1683, 1689-1691, 1695-1702, 1712, 1713, 1715-1723	36,000
	1660, 1661, 1668, 1669, 1679-1681, 1684-1688, 1693,	
	1694, 1703-1711, 1714, 1724-1729	30,000
	1903	1,000
•	1870-1872, 1879, 1882-1888, 1897, 1898, 1901, 1902,	
	1907-1913, 1916-1921, 1929-1931, 1939-1941	34,000
	1876, 1877, 1880, 1881, 1892-1896, 1899-1900, 1904-	
	1906, 1914, 1915, 1922-1924, 1932-1938	26,000
	Total	\$515,000
	515 Bonds.	
	[fol. 127] First Issue—Dated July —, 1916	
	\$500 Denomination	
	Bond Numbers Total Pr	in. Amt.
	293, 294, 311, 319, 320	2,500
	365-370, 375-380	6,000
	371-374, 381-384, 389-405	12,500
	456-461, 466-473, 476-479, 484-494, 498, 500-506	18,500
	462-465, 474, 475, 507	3,500
	564, 573-576, 582-584, 593-602, 604-613, 620, 624-630	18,000
	565-572, 581, 603, 617-619, 622, 623	7,500
	666-675, 692-695, 699-718, 720, 721, 723-732	23,000
	678-681, 684, 685	3,000
	771-780, 834, 835, 837	6,500
	784, 785, 789-816, 823-833, 838, 839	21,500
	883-889, 900-904, 907, 913-933, 939, 943-960	26,500
	890-899, 905, 906, 908-912, 937, 938, 940, 961-966.	13,000
	1009-1026, 1031, 1032, 1035-1038, 1051-1054, 1056-	20,000
	1060, 1072, 1073, 1075, 1076	18,500
	1027-1030, 1033, 1034, 1039-1050, 1055, 1061-1071,	10,000
	1074, 1077-1092	23,500
	1135-1136, 1148, 1149, 1160, 1162, 1163, 1166-1169,	20,000
	1172-1175, 1178-1189, 1192-1212, 1216, 1217	25,000
	4	40.000

Bond Numbers	Total Prin. Amt.
1137-1147, 1150-1159, 1161, 1164, 1165, 117	17,000
1176, 1177, 1190, 1191, 1213-1215, 1218	
1261-1279, 1283-1285, 1287-1289, 1296-130	344 30,000
1318-1321, 1223-1326, 1329-1341, 1343, 1	
1280, 1281, 1293-1295, 1342	3,000
1394-1396, 1407-1415, 1421, 1424-1431, 14	3(-144),
1466-1479, 1481-1491	28,500
1397-1400, 1403-1406, 1432-1436, 1456-1465	, 1480 . 12,000
1548, 1549, 1554-1579, 1581, 1582, 1586, 158	57, 1007-
1613, 1617-1636, 1638, 1639-1641, 1643-16	48, 1653-
1659	38,000
1550-1553, 1580, 1583-1585, 1588-1594, 16	601-1606,
1637	11,000
1730-1732, 1739-1758, 1760, 1767, 1772, 17	73, 1781,
1791, 1793-1802, 1804, 1808-1832, 1845-18	50, 1853-
1869	44,000
1733 1834 1759, 1761-1766, 1768-1771, 17	74-1780,
1782, 1783, 1786, 1787, 1805-1807, 1836-18	344 18,000
1947-1950, 1953-1956, 1960-1962, 1964-196	6, 1968,
1969 1974-1979 1988-1994 2001-2006 20	009-2016,
1030, 2031-2034, 2039-2041, 2044-2096, 2	099-2100 53,000
1051 1052	1,000
1957-1959, 1963, 1967, 1970, 1971, 1973, 1	980-1987,
2007, 2008, 2017-2029, 2035-2038, 2042, 2	043 18,500
2001, 2000, 2011 2020, 2000 2000, 2000	
Total	\$503,000
1,006 Bonds.	
[fol. 128] Second Issue—Dated October	1, 1918
\$1,000 Denomination	
Bond Numbers	Total Prin. Amt.
	4,000
23-26	5,000
34-38	4 000
60	
76-80	
95-100	
114-120	
132-138	
150, 151	7,000
152-156	2,000
	2,000 5,000
173-175	2,000 5,000 3,000
	2,000 5,000 3,000

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Bond Numb	ers			Total Pr	in. Amt.
196, 198-200					4,000
197, 201					2,000
					8,000
240-243, 243					7,000
					1,000
167-169, 272					6,000
273, 274					
					10,000
					,
,					14,000
	*				22,000
Total					\$105,000
105 Bonds					
100 Donus		00 Denon	ination		
				*	
					3,500
					2,500
					1,000
68-75					4,000
					6,500
101-113					6,500
121-129					4,500
130-131					1,000
139-148					5,000
149					500
157-172					8,000
180-182, 188-	-192				4,000
					1,500
204-211					4,000
					3,000
226-239					7,000
248-255, 264	, 265				5,000
256-261					3,000
					5,000
005 000					5,000
309-326, 329-					12,000
000 000					1,000
349-375					13,500
				-	20,000
Total					\$107,000
214 Bonds				*	

[fol. 129] [File endorsement omitted.]

#### No. 4575

In the Matter of the Petition of LINDSAY-STRATHMORE IRRIGATION DISTRICT, an Insolvent Taxing Agency, for Confirmation of a Plan for the Composition and Readjustment of Its Debts

JUDGMENT OF DISMISSAL-Filed December 2, 1937

The motion of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder as trustee for Eva A. Parrington trust, C. A. Moss, and James H. Jordan, creditors of Lindsay-Strathmore Irrigation District, to dismiss this cause, and the return of said creditors to the Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered herein coming on regularly to be heard by the Court the 8th day of November, 1937, and it appearing that in this cause Lindsay-Strathmore Irrigation District filed its verified petition setting forth a plan for composition and readjustment of its debts under Sections 81, 82 and 83 of Chapter X of the National Bankruptcy Law, as amended, and that this Court made an Order Approving the Petition as Properly Filed and for Notice to Creditors on September 21, 1937, and that this Court on September 22, 1937, made an Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered, and fixed Monday the 11th day of October, 1937, at Fresno, California, as the time and place for the return to said Order; said creditors of said [fol. 131] District, bondholders thereof, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva Parrington trust, C. A. Moss and James H. Jordan, having made their return to said Order showing cause why an injunction should not issue and why an interlocutory decree making the plan temporarily operative should not be entered; and James Irvine, one of said creditors, having filed herein his proof of claim as required by the Court's order, from which it appears that he is a creditor of Lindsay-Strathmore Irrigation District and the owner and holder of bonds of said district, described in the petition herein, in the principal amount of \$18,500.00, of which bonds in the amount of \$14,000.00 have matured, and attached to which are interest coupons in the amount of \$3825.00 which have matured, and which bonds and coupons have all been severally presented for payment;

And it further appearing that said James Irvine and the other said creditors, as shown by their return, are creditors of the Lindsay-Strathmore Irrigation District and the owners and holders of bonds and interest coupons of said District adversely affected by the proposed plan for composition and readjustment of the debts of said District, and the said creditors having duly made their motion to dismiss this cause, which said motion for dismissal and return to said order were based, amongst other things, upon the unconstitutionality of the said Sections 81, 82 and 83 of the Bankruptcy Act of 1898, as amended, and said return and motion coming on regularly to be heard by the Court on the 11th day of October, 1937;

And it appearing therefrom that the constitutionality of the statutes aforesaid was drawn in question by the pleadings of the said creditors, this Court certified such fact to [fol. 132] the Attorney General of the United States, and upon his application the case was duly continued to November 8, 1937, whereupon an Order was made permitting the Attorney General of the United States to intervene as a party to said cause and to be heard on the question of the constitutionality of the Act, an exception being allowed

to the respondent creditors:

And the said return of the Order having been submitted to the Court and the motion to dismiss the cause having been likewise submitted to the Court and by the Court considered, and the Court being now fully advised in the premises, determines that Sections 81, 82 and 83 of the Bankruptcy Act of 1898, as amended, are unconstitutional and the proceedings taken thereunder void;

Wherefore, it is Hereby Ordered, Adjudged and Decreed that the said Order to Show Cause Why Injunction Should

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Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not be Entered be and the same is hereby vacated and set aside and the Petition of Lindsay-Strathmore Irrigation District Herein for Confirmation of a Plan for the Composition and Readjustment of Its Debts be and the same is hereby dismissed with prejudice, solely upon the ground that the statute under which the proceeding is brought is unconstitutional. An exception to this order and judgment is hereby allowed to the debtor, Lindsay-Strathmore Irrigation District, and to the intervenor.

Dated December 2, 1937.

Leon R. Yankwich, United States District Judge.

Approved as to form as provided in Rule 44.

Mitchell, Silberberg, Roth & Knupp, James R. Mc-Bride, by Guy Knupp, Attorneys for Lindsay-Strathmore Irrigation District. Ben Harrison, United States Attorney, Attorneys for Intervenor.

Decree entered and recorded 12/2/37. R. S. Zimmerman, Clerk, by Louis J. Somers, Deputy Clerk.

[fol. 133] [File endorsement omitted.]

[fol. 134] IN UNITED STATES DISTRICT COURT

No. 4575. Bkcy.

[Title omitted]

ORDER AMENDING ORDER GRANTING MOTION TO DISMISS— December 13, 1937

Good cause appearing therefor, the minute order heretofore entered under date of November 13, 1937, is hereby amended to read as follows:

This matter having been heretofore submitted for decision on the motion to dismiss, opinion filed sustaining motion of certain creditors to dismiss and to discharge restraining order. Formal order of dismissal to follow.

Exception to debtor and intervenor. Opinion filed.

14/349.

[fol. 135] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

Petition for Order Allowing Appeal—Filed December 13, 1937

To the Honorable Leon R. Yankwich, Judge of the District Court of the United States, Southern District of California, Northern Division:

The Lindsay-Strathmore Irrigation District, petitioner above named, feeling aggrieved by the judgment of dismissal entered in the above entitled court and proceeding on the 2nd day of December, 1937, hereby appeals from said judgment to the Supreme Court of the United States; the errors upon which such appeal is based are contained in the assignments of error filed herewith; petitioner prays that its appeal be allowed and that a citation be issued in accordance with law and that an authenticated transcript of the record and proceedings be forwarded to the Supreme Court of the United States at Washington, D. C., under the rules of such court, in such cases made and provided.

Your petitioner further prays that an order be made fixing the amount of security to be given by appellant, con-

ditioned as provided by law.

Dated this 13th day of December, 1937.

Lindsay-Strathmore Irrigation District, by Jas. R. McBride, Guy Knupp, Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, Its Attorneys.

gk; m. 12/11/37.

[File endorsement omitted.]

[fol. 136] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

Assignments of Error-Filed December 13, 1937

Lindsay-Strathmore Irrigation District, petitioner and appellant herein, in support of its petition for appeal from

the judgment of dismissal of the District Court of the United States for the Southern District of California, Northern Division, made and entered in the above entitled proceeding on the 2nd day of December, 1937, presents and files the following assignments of error:

The District Court of the United States for the Southern

District of California, Northern Division, erred:

1. In deciding and decreeing to be unconstitutional the act of Congress known as Chapter X of the Bankruptcy Act (Aug. 16, 1937, C. 657, 50 Stats. 659, U. S. C. A. title XI, Sec. 401-404) as applicable to the petition of the Lindsay-Strathmore Irrigation District;

- 2. In dismissing the petition of petitioner and its proceedings brought under the above mentioned act of Congress on the ground that said Chapter X of the Bankruptcy Act, the act under which the petition was filed, is unconstitutional;
- 3. In dismissing the petition of petitioner and its proceedings brought under the above mentioned act of Congress;
- 4. In vacating and setting aside the order to show cause why a restraining order should not issue and plan be made [fol. 137] temporarily operative.

Wherefore, petitioner and appellant prays that the judgment in said proceeding be reversed and the proceeding remanded with instructions to the trial court as to further proceedings therein; and for such other and further relief as may be just in the premises.

Lindsay-Strathmore Irrigation District, by Jas. R. McBride, Guy Knupp, Mitchell, Silberberg, Roth &

Knupp, by Guy Knupp, Its Attorneys.

gk; m. 12/11/37.

# [fol. 138] IN UNITED STATES DISTRICT COURT

# No. 4575. Bankruptcy

# [Title omitted]

ORDER ALLOWING APPEAL—Filed December 13, 1937

The Lindsay-Strathmore Irrigation District, petitioner in the above entitled proceeding, having prayed for the allowance of an appeal in this proceeding to the Supreme Court of the United States from the judgment of dismissal made and entered in the above entitled proceeding by the District Court of the United States for the Southern District of California, Northern Division, on the 2nd day of December, 1937, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal, and a statement as — jurisdiction, pursuant to statutes and the rules of the Supreme Court of the United States in such cases made and provided;

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Southern District of California, Northern Division, in this proceeding as provided by law.

And it is further ordered that the clerk of this court shall prepare and certify a transcript of the record, proceedings and judgment in this proceeding and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within sixty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of \$500.00.

Dated this 13th day of December, 1937.

(Signed) Leon R. Yankwich, United States District Judge.

GK: EF. 12/10/37.

# [fols. 139-179] IN UNITED STATES DISTRICT COURT

# No. 4575. Bankruptcy

# [Title omitted]

ORDER APPROVING SECURITY FOR COSTS—Filed December 13, 1937

It appearing that the sum of Five Hundred Dollars (\$500.00) in cash has been deposited with the Clerk of the above entitled Court in lieu of a surety bond, as security for costs upon the appeal of Lindsay-Strathmore Irrigation District to the Supreme Court of the United States from the judgment of dismissal entered in the above entitled court on the 2nd day of December, 1937,

It is Hereby Ordered, that if said Lindsay-Strathmore Irrigation District shall prosecute its said appeal to effect and if it fail to make its plea good, shall answer all costs, not exceeding in the aggregate the sum of Five Hundred Dollars (\$500.00), then the said Five Hundred Dollars (\$500.00) shall be returned by said Clerk to the attorneys of record for said Lindsay-Strathmore Irrigation District; otherwise said Five Hundred Dollars (\$500.00) shall be employed to pay any judgment for costs not exceeding the aggregate of Five Hundred Dollars (\$500.00) awarded to respondents and appellees herein.

And it is Further Ordered that said deposit of cash shall be deemed full compliance with the order of this court dated December 13th, 1937, requiring security for costs in the sum of Five Hundred Dollars (\$500.00).

Dated December 13th, 1937.

(Signed) Leon R. Yankwich, United States District Judge.

gk: m. 12/10/37.

# [fol. 180] IN UNITED STATES DISTRICT COURT

# No. 4575. Bankruptcy

### [Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed December 16, 1937

To the Clerk of the United States District Court for the Southern District of California, Northern Division:

You Will Please Incorporate in the transcript of the record on appeal to the Supreme Court of the United States in the above entitled proceeding the following:

1. Petition of Lindsay-Strathmore Irrigation District for confirmation of plan for composition and readjustment of its debts:

2. Order approving petition as properly filed and for

notice to creditors;

3. Order to show cause why injunction should not issue and why interlocutory decree making plan temporarily

operative should not be entered;

4. Motion to dismiss of Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Katherine Bekins, deceased; J. R. Mason; James Irvine; A. Heber Winder, as Trustee for Eva A. Parrington Trust; and C. A. Moss;

5. Motion to dismiss of James H. Jordan;

6. Notice of motion to dismiss petition by Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the [fol. 181] Will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Katherine Bekins, deceased; J. R. Mason, James Irvine; A. Heber Winder, as Trustee for Eva A. Parrington Trust; and C. A. Moss;

7. Return of certain creditors showing cause why an injunction should not issue and why an interlocutory decree making plan temporarily operative should not be entered;

8. Affidavit of mailing notice to creditors by Lillian

Goodman;

- 9. Affidavit of mailing order to show cause by Lillian Goodman;
  - 10. Affidavit of publication by Morely M. Maddox;

11. Affidavit of publication by G. Artz;

12. Certificate of court under Act of August 24, 1937, issued on October 11, 1937;

13. Petition of the United States to intervene under the Act of August 24, 1937, filed November 8, 1937;

14. Order granting permission of United States to in-

tervene entered November 8, 1937;

15. Opinion of court on motion to dismiss;16. Proof of claim by W. J. Burns, Trustee;

- 17. Proof of claim by Reconstruction Finance Corporation;
  - 18. Judgment of dismissal;

19. Petition for appeal;

20. Assignments of error;

21. Order allowing appeal;22. Order approving security for costs;

23. Citation with admission of service;

24. Statement as to jurisdiction of the Supreme Court—Rule 12;

25. Statement directing attention to Section 3 of Rule 12;

26. Præcipe of appellant with admission of service; [fol. 182] 27. Clerk's certificate.

Said transcript to be prepared as required by law and the rules of this court and the Supreme Court of the United States and to be filed in the office of the Clerk of the United States at Washington, D. C., on or before the 11th of February, 1938.

Dated this 13th day of December, 1937.

Lindsay-Strathmore Irrigation District, by James R. McBride, Guy Knupp, Mitchell, Silberberg, Roth & Knupp, by Guy Knupp, Its Attorneys.

Due service of the within "Præcipe" acknowledged this

14th day of December, 1937.

W. Coburn Cook, Attorney of record for Milo W. Bekins, and Reed J. Bekins, as Trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Katherine Bekins, deceased; J. R. Mason; James Irvine; A. Heber Winder; as trustee for Eva A. Parrington trust; C. A. Moss and James H. Jordan, the objecting creditors of Lindsay-Strathmore Irrigation District who moved to dismiss the proceeding.

gk;m. 12/11/37.

[fol. 183] IN UNITED STATES DISTRICT COURT

No. 4575. Bankruptcy

[Title omitted]

COUNTER PRECIPE FOR TRANSCRIPT OF RECORD—Filed December 23, 1937

To the Clerk of the Above Entitled Court:

You are hereby requested to include in the transcript of record to be filed in the Supreme Court of the United States pursuant to the appeal allowed in the above entitled cause to the Lindsay-Strathmore Irrigation District in addition to the portions of the record required by the United States of America the following papers, to-wit:

1. Certified copy of judgment of dismissal signed by Honorable Geo. Cosgrave in cause No. 4005 in bankruptcy in the District Court of the United States, for the Southern District of California, Northern Division, in the matter of Lindsay-Strathmore Irrigation District, an insolvent taxing district, filed as an exhibit upon return to order to show cause on November 8, 1937.

2. Proof of Claim of James Irvine.

3. Minute Order dated November 8, 1937, authorizing intervention of United States of America and allowing exception to appellees.

4. Amended minute order of court dated November 13,

1937.

5. Minute order dated December 13, 1937.

6. This Counter-Præcipe for transcript of record.

And include in the transcript of record to be filed in the office of the Clerk of the United States Supreme Court at Washington, D. C.

Dated December 22, 1937.

W. Coburn Cook, Attorney for Milo W. Bekins, et al., Appellees.

[fols. 184-185] AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,

County of Stanislaus, ss:

Jeanette Ofelth, being first duly sworn, says:

That she is a citizen of the United States; that she resides in the City of Turlock, County of Stanislaus, State of

California, in the county in which the mailing hereafter referred to took place; that she is over the age of 18 years and not interested in the above entitled matter; that on the 22nd day of December, 1937, she placed a full, true and correct copy of the annexed Counter-Præcipe for Transcript of Record in each of two envelopes, duly sealed, and deposited the same in the United States Post Office at Turlock, California, with postage thereon fully prepaid, addressed to Mr. James R. McBride, Attorney at Law, Lindsay, California; Mitchell, Silberberg, Roth & Knupp and Guy Knupp, Attorneys at Law, 603 Roosevelt Building, Los Angeles, California.

That said James R. McBride, Mitchell, Silberberg, Roth & Knupp and Guy Knupp are the attorneys for record for Lindsay-Strathmore Irrigation District, appellant. That there is daily communication between Lindsay and Turlock, and between Los Angeles and Turlock, California.

Jeanette Ofelth.

Subscribed and sworn to before me this 22nd day of December, 1937. Gilbert Moody, Notary Public in and for the County of Stanislaus, State of California.

[File endorsement omitted.]

[fol. 186] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 187] IN UNITED STATES DISTRICT COURT

No. 4575. In Bankruptcy.

[Title omitted]

PETITION FOR APPEAL—Filed December 13, 1937

To the Honorable the Judges of the District Court of the United States for the Southern District of California:

Now comes the United States of America, intervenor in the above entitled case and prays that it may be permitted to take an appeal from a judgment of dismissal entered in the above entitled cause on December 2, 1937, to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith.

December 13, 1937.

United States of America, by Sam E. Whitaker,
Assistant Attorney General; Ben Harrison, United
States Attorney for the Southern District of California.

[fol. 188] [File endorsement omitted.]

[fol. 189] IN UNITED STATES DISTRICT COURT

No. 4575. In Bankruptcy

. [Title omitted]

Assignment of Errors-Filed December 13, 1937

Appellant, the United States of America, assigns the following errors in the record and proceedings in the above entitled cause:

- 1. The Court erred in helding that Chapter X of the Bankruptcy Act, Act of August 16, 1937, Public No. 302, 75th Congress, is unconstitutional as applicable to the petition of the Lindsay-Strathmore Irrigation District herein.
- 2. The Court erred in dismissing the petition of the Lindsay-Strathmore Irrigation District on the ground that Chapter X of the Bankruptcy Act, Act approved August 16, 1937, Public No. 302, 75th Congress, the Act under which said petition was filed, is unconstitutional and void.

Wherefore, the United States of America prays that said judgment of the Court may be reversed and further relief as to the Court may seem just and proper.

December 13, 1937.

United States of America, by Sam E. Whitaker, Assistant Attorney General; Ben Harrison, United States Attorney for the Southern District of California. [fol. 191] IN UNITED STATES DISTRICT COURT

No. 4575. In Bankruptcy

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 13, 1937.

To the Honorable Judges of the District Court of the United States for the Southern District of California:

The petition of the United States of America, intervenor in the above entitled cause, for an appeal to the Supreme Court of the United States from a judgment of the District Court of the United States for the Southern District of California, entered herein on December 2, 1937, dismissing the petition of the Lindsay-Strathmore Irrigation District, having been filed herein, accompanied by an assignment of errors and statement of jurisdiction, all as provided by Rules 9 and 12 of the Rules of the Supreme Court of the United States, and the said papers having been presented to this Court:

It is hereby ordered that the United States of America be allowed an appeal to the Supreme Court of the United States from said judgment of said District Court entered on December 2, 1937, and that the Clerk of said District Court of the United States for the Southern District of California shall transmit to the Supreme Court of the United States a duly authenticated transcript of the record, proceedings, and papers in this cause, all in accordance with Rules 10 and 12 of the Rules of the Supreme Court of the United States.

[fol. 192] The appeal is allowed without the giving of bond.

December 13, 1937.

Leon R. Yankwich, United States District Judge.

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[fol. 193] [File endorsement omitted.]

[fol. 194] In Supreme Court of the United States, October Term, 1937

#### No. 757

STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF ENTIRE RECORD FOR PRINTING Filed February 28, 1938

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record, as filed in the above entitled cause, necessary for the consideration of the points relied upon.

Golden W. Bell, Acting Solicitor General.

Service acknowledged February 18, 1938.

Maurice E. Harrison, Counsel for Appellee. Jas. R. McBride, Counsel for Appellant Lindsay-Strathmore Irrigation District. W. Coburn Cook, of Counsel.

[fol. 1941/2] [File endorsement omitted.]

[fol. 195] IN SUPEEME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

## No. 772

STATEMENT OF POINTS INTENDED TO BE RELIED UPON BY APPELLANT AND PARTS OF RECORD TO BE PRINTED—Filed February 8, 1938

Lindsay-Strathmore Irrigation District, appellant in the above entitled cause, pursuant to the provisions of paragraph 9 of Rule 13 of this Court, hereby states that the points upon which it intends to rely in this Court in this case are as follows:

1. Chapter X of the Bankruptcy Act (August 16, 1937, C. 657, 50 Stats. 659, U. S. C. A., Title 11, Secs. 401, 404) as applicable to the petitioner and appellant, Lindsay-Strathmore Irrigation District, is constitutional and valid.

2. The District Court erred in dismissing the petition of petitioner and appellant, Lindsay-Strathmore Irrigation

District, and the proceedings brought by it under the above mentioned act of Congress on the ground that said chapter [fol. 196] of the Bankruptcy Act is unconstitutional.

3. The District Court erred in vacating and setting aside the order to show cause why a restraining order should not issue and the plan be made temporarily operative, which order to show cause was issued upon the filing of said petition under the above mentioned act of Congress.

Said appellant, Lindsay-Strathmore Irrigation District, further represents that the whole record as filed is necessary for a consideration of the points upon which appellant intends to rely, and requests that the entire record as filed

be printed.

Dated February 4, 1938.

Jas. R. McBride, National Bank Building, Lindsay, California, Counsel for Appellant Lindsay-Strathmore Irrigation District. Guy Knupp, 603 Roosevelt Building, Los Angeles, California, of Counsel for Appellant Lindsay-Strathmore Irrigation District.

### Admission of Service

Service of the foregoing statement and designation is hereby admitted this — day of February, 1938.

gk:m. 2/4/38.

[fol. 197]

Affidavit of Mailing

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Pauline Moore, being first duly sworn, deposes and says: That she is, and at all times herein mentioned was, a citizen of the United States, over the age of eighteen years,

and not a party to the above entitled action.

That on the 4th day of February, 1938, at the request and on behalf of the attorneys for appellant, Lindsay-Strathmore Irrigation District, she served a true copy of the attached Designation of Points Intended to be Relied Upon by Appellant and Parts of Record to be Printed on Maurice E. Harrison, attorney for appellees, and on W. Coburn Cook, of counsel for appellees, and on Ben Harrison, attor-[fol. 198] ney for appellant, United States of America, by

depositing envelopes containing copies of said Designation of Points Intended to be Relied Upon by Appellant and Parts of Record to be Printed in the United States Post Office in the City of Los Angeles, County of Los Angeles, State of California, which envelopes bore the names and addresses as follows:

Maurice E. Harrison, Esq., Attorney at Law, 620 Market Street, San Francisco, California.

W. Coburn Cook, Esq., Attorney at Law, Berg Building,

Turlock, California.

Ben Harrison, Esq., United States District Attorney, Pacific Electric Building, Los Angeles, California.

That said envelopes were sealed and deposited in the mail at said Post Office, with the postage thereon fully prepaid. That the said addresses are the office addresses of said attorneys as last given by them on documents which were filed in said cause and served on the said appellant. That there is regular communication by mail between the place of mailing and the places so addressed.

Pauline Moore.

Subscribed and sworn to before me this 4th day of February, 1938. Lynne V. Buck, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 1981/2] [File endorsement omitted.]

[fol. 199] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 757

No. 772

STIPULATIONS AS TO PRINTING RECORDS—Filed March 9, 1938

On Appeal from the District Court of the United States for the Southern District of California

As the record on file with the Clerk of the Supreme Court of the United States in Case No. 772 contains all the papers necessary to a consideration of the Government's Appeal

in Case No. 757, except the Government's Petition for Appeal, Assignment of Errors, and Order Allowing Appeal, it is hereby stipulated and agreed by and between the Acting Solicitor General, on behalf of the United States, and Counsel for the Lindsay-Strathmore Irrigation District, Appellant in Case No. 772, and Counsel for Appellees in both cases, that the printing of the record in Case No. 757 be dispensed with and that Case No. 757 be heard on the printed record in Case No. 772 with the addition to said record of this stipulation, the Government's Petition for Appeal, Assignment of Errors, and Order Allowing the Appeal as contained in the record in Case No. 757.

[fol. 200] It is Also Further Stipulated and Agreed between Counsel for the United States and Counsel for the Lindsay-Strathmore Irrigation District that the Government will pay one-half the cost of printing the record in Case No. 772 as amplified in accordance with this stipula-

tion.

Dated March 1st, 1938.

Golden W. Bell, Acting Solicitor General of the United States. Jas. R. McBride, Counsel for Lindsay-Strathmore Irrigation District. Maurice Education, Counsel for Milo W. Bekins and Reed J.

Bekins, as Trustees appointed by the Will of Martin Bekins, deceased, et al.

[fol. 201] [File endorsement omitted.]

[fol. 202] Endorsed on cover: File No. 42,238. S. California, D. C. U. S. Term No. 757. The United States of America, appellant, vs. Milo W. Bekins and Reed J. Bekins, as Trustees, Appointed by the Will of Martin Bekins, Deceased, et al., etc. Filed February 5, 1938. Term No. 757, O. T., 1937.

[fol. 203] Endorsed on cover: File No. 42,253. S. California, D. C. U. S. Term No. 772. Lindsay-Strathmore Irrigation District, appellant, vs. Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Martin Bekins, Deceased, et al. Filed February 8, 1938. Term No. 772, O. T. 1937.

(4560)

# In the District Court of the United States Southern District of California, Northern Division

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## No. 4575 IN BANKRUPTCY

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY

## STATEMENT OF JURISDICTION UNDER RULE 12 (1), OF THE SUPREME COURT OF THE UNITED STATES

The appellate jurisdiction of the Supreme Court of the United States in this case is invoked under the Act of Congress approved August 24, 1937, Public No. 352, 75th Congress, Chapter 754, 1st Session, a copy of which Act is appended hereto.

There is involved in this proceeding the validity of Chapter X as added to the Bankruptcy Act of July 1, 1898, and Acts amendatory thereof and supplementary thereto, by the Act approved August 16, 1937, Public No. 302, 75th Congress, Chapter 657, 1st Session, which Act was declared unconstitutional by the District Court in this case, and which entered a judgment on December 2, 1937, dismissing the petition of Lindsay-Strathmore Irrigation District for confirmation of a plan for the composition and readjustment of its debts, which

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petition was filed under authority of the Act of August 16, 1937, on the ground that such Act was unconstitutional and the proceedings thereunder void. This appeal is taken from said judgment of dismissal of December 2, 1937; petition for appeal was filed December 13, 1937.

The Act of August 16, 1937, Chapter X of the Bankruptcy Act, confers jurisdiction upon courts of bankruptcy in addition to the jurisdiction otherwise exercised, for the composition of indebtedness of or authorized by any of the taxing agencies or instrumentalities, as set out in said Act, including a taxing agency of the character of the Lindsay-Strathmore Irrigation District, petitioner for composition herein. A copy of the Act of August 16, 1937, is appended hereto.

On September 21, 1937, the Lindsay-Strathmore Irrigation District filed its petition in the office of the Clerk of the District Court of the United States in and for the Southern District of California alleging among other things that petitioner is an irrigation district duly organized and existing pursuant to and by virtue of an Act of the Legislature of the State of California, known as the "California Irrigation District Act," approved March 31, 1937, and Acts amendatory thereof and supplementary thereto, and comprises 15,260 acres of land located wholly in the County of Tulare, State of California, within the territorial jurisdic-

tion of the above entitled Court; that petitioner is a taxing agent or instrumentality within the meaning and intent of the Act of Congress approved August 16, 1937, and is entitled to the relief provided by said Act; that the petitioner is insolvent and unable to meet its debts as they mature and desires to effect a plan of composition of its debts; that the debts of petitioner which are affected by the proposed plan of composition as thereinafter set out consist of outstanding bonds in the principal aggregate amounts, of \$1,192,000.00 and \$235,-000.00, respectively, of two issues of bonds duly issued by petitioner under the provisions of said California Irrigation District Act, and the matured and unpaid interest thereon, as described in said petition; that a plan for the composition and readjustment of said debts of petitioner as set out in said petition has been accepted and approved by petitioner and by creditors of petitioner owning not less than 51 per cent in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), to-wit, creditors owning approximately 87 per cent of such securities, have in writing accepted said plan and consented to the filing of the petition. The plan proposed the payment to the holders of said outstanding bonds an amount equal to 59.978 cents for each dollar of the principal amount of each bond in full payment, discharge, and satisfac-

being holders of bouds of the jourses as described

tion of all amounts of principal and interest payable on such bonds under the terms thereof, which payment was to be made from the proceeds of a loan which the Reconstruction Finance Corporation, an agency of the United States of America, has agreed to make petitioner.

The petition prayed among other things for an order approving the petition as properly filed, for an order fixing time and place for hearing and for notice to creditors; for an order enjoining and staying pending determination of the matter, the commencement or continuation of suits against petitioner or any officer thereof an account of the securities affected by the plan; for an interlocutory decree approving and affirming the plan and putting it into effect and for a final decree discharging petitioner from all debts and liabilities upon completion of the plan and in accordance therewith.

On September 21, 1937, the Court entered an order approving the petition as properly filed under the Act of August 16, 1937; and on September 22, 1937, issued an order to creditors of the Lindsay-Strathmore Irrigation District to show cause why injunction should not issue and why an interlocutory decree making the plan temporarily effective should not be entered, which order was returnable on October 11, 1937. This order was duly served upon the creditors of the petitioner.

Thereafter, certain creditors of the petitioner, being holders of bonds of the issues as described in the petition, filed motions to dismiss the petition on the ground that the Court was without jurisdiction to entertain the petition, and the plan of readjustment set out therein, because the Act under which the proceeding was brought, being the Act of August 16, 1937, was unconstitutional and void.

The cause coming on for hearing on October 11, 1937, the Court on that day issued a certificate to the Attorney General of the United States in accordance with said Act of August 24, 1937, to the effect that the constitutionality of the Act of Congress of August 16, 1937, Public, No. 302, 75th Congress, was drawn in question and granting authority to the United States to intervene and become a party for presentation of evidence and argument upon the question of the constitutionality of said Act; and the cause was continued for further hearing.

Thereafter, on November 8, 1937, the United States filed its petition in intervention in the proceeding under the authority of said Act of August 24, 1937, praying for an order allowing it to intervene in said cause under the provisions of said Act; and on said date, an order was entered by the United States District Judge granting the petition of the United States to intervene in said cause, and thereafter hearing was had, at which hearing argument was made by the United States in support of the constitutionality of Chapter X of the Bankruptcy Act, Act of August 16, 1937.

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Thereafter, on November 13, 1937, an opinion was filed by the United States District Court holding that Chapter X of the Bankruptcy Act, Act of August 16, 1937, in so far as it applies to irrigation districts of the type of petitioner, was unconstitutional and void; and on December 2, 1937, judgment was entered by the District Court vacating the order to show cause and dismissing the petition of Lindsay-Strathmore Irrigation District with prejudice solely on the ground that the statute under which the proceeding was brought was unconstitutional. Said judgment allowed an exception to the debtor, Lindsay-Strathmore Irrigation District, and to the intervenor. A copy of the opinion of the Court and of the judgment of dismissal filed December 2, 1937, are appended hereto.

The Act of August 16, 1937, Public, No. 302, 75th Congress, is an Act of Congress affecting the public interest and the decision of the District Court is against the constitutionality of said Act.

December 13, 1937.

United States of America, By:

Sam E. Whitaker, Sam E. Whitaker,

Assistant Attorney General.

J BEN HARRISON, Ben Harrison,

United States Attorney for the Southern District of California.

# [Public-No. 352-75TH Congress]

[Chapter 754—1st Session]

[H. R. 2260]

### AN ACT

To provide for intervention by the United States, direct appeals to the Supreme Court of the United States, and regulation of the issuance of injunctions, in certain cases involving the constitutionality of Acts of Congress, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act.

SEC. 2. In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order; and in the event that any such appeal is taken, any appeal or crossappeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of an appeal under this section, shall also be or be treated as taken directly to the Supreme Court of the United States. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. peals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law.

SEC. 3. No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge. When any such application is presented to a judge. he shall immediately request the senior circuit judge (or in his absence, the presiding circuit judge) to the circuit in which such district court is located to designate two other judges to participate in hearing and determining such application. It shall be the duty of the senior circuit judge or the presiding circuit judge, as the case may be, to designate immediately two other judges from such circuit for such purpose, and it shall be the duty of the judges so designated to participate in such hearing and determination. Such application shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit: Provided, That if of opinion that irreparable loss or damage would result to the petitioner unless a temporary restraining order is granted, the judge to whom the application is made may grant such temporary restraining order at any time before the hearing and determination of the application, but such temporary restraining order shall remain in force only until such hearing and determination upon notice as aforesaid, and such temporary restraining order shall contain a specific finding, based upon evidence submitted to the court making the order and identified by reference thereto, that such irreparable loss or damage would result to the petitioner, and specifying the nature of the loss or damage. The said court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension, in whole or in part, until decision upon the application. The hearing upon any such application for an interlocutory or permanent injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day. An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of

the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law.

SEC. 4. Section 13 of the Judicial Code, as amended (U.S. C. 1934 edition, title 28, sec. 17), is hereby amended to read as follows:

"SEC. 13. Whenever any district judge by reason of any disability or absence from his district or the accumulation or urgency of business is unable to perform speedily the work of his district, the senior circuit judge of that circuit, or, in his absence, the circuit justice thereof, shall designate and assign any district judge of any district court within the same judicial circuit to act as district judge in such district and to discharge all the judicial duties of a judge thereof for such time as the business of the said district court may require. Whenever it is found impracticable to designate and assign another district judge within the same judicial circuit as above provided and a certificate of the needs of any such district is presented by said senior circuit judge or said circuit justice to the Chief Justice of the United States, he, or in his absence the senior associate justice, shall designate and assign a district judge of an adjoining judicial circuit if practicable, or if not practicable, then of any judicial circuit, to perform the duties of district judge and hold a district court in any

however. That before any such designation or assignment is made the senior circuit judge of the circuit from which the designated or assigned judge is to be taken shall consent thereto. All designations and assignments made hereunder shall be filed in the office of the clerk and entered on the minutes of both the court from and to which a judge is designated and assigned, as well as on the minutes of the Supreme Court of the United States, to the clerk of which both of such other clerks shall immediately report the fact and period of assignment."

SEC. 5. As used in this Act, the term "court of the United States" means the courts of record of Alaska, Hawaii, and Puerto Rico, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals; and the Supreme Court of the United States; the term "district court of the United States" includes the District Court of the United States for the District of Columbia; the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia: the term "circuit" includes the District of Columbia; the term "senior circuit judge" includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term "judge" includes justice.

Approved, August 24, 1937.

[Public-No. 302-75TH Congess]

[Chapter 657—1st Session]

[H. R. 5969]

### AN ACT

To amend an Act entitled "An Act to establish a uniform system of backruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," as approved July 1, 1898, and Acts amendatory thereof and supplementary thereto be, and they are hereby, amended by adding thereto a new chapter, to be designated "chapter X," to be and read as follows:

## "CHAPTER X

### "ADDITIONAL JURISDICTION

"SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said tax-

ing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination thereof; (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities: or (6) any city, town, village, borough, township, or other municipality: Provided, however,

That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

#### "DEFINITION

"SEC. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

"That the term 'petitioner' shall include any taxing agency or instrumentality referred to in section 81 of this chapter.

"The term 'security' shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

"The term 'creditor' means the holder of a security or securities.

"Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

"The term 'security affected by the plan' means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

"The singular number includes the plural and the masculine gender the feminine.

### "COMPOSITIONS

"SEC. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of \$100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of the Uniform Bankruptcy Act of 1898, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have accepted it in writing. There shall be filed with the petition a list of all known

creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

"The 'plan of composition,' within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

"No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

"For all purposes of this chapter any creditor may act in person or by an atto ney or a duly au-

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thorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

"(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which

claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for the hearing.

"At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the per-

centage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained, shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interests: Provided, however, That the holders of all claims, regardless of the manner in which they are evidenced, which are pavable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

"At the hearing, or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether

such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceeding as may be just: Provided, however, That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States Circuit Court of Appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily. only summed about this is sufficiently

"On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

"(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any

officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides measurement and the relation of the resemble

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"(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affeeted by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner: Provided, however, That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1), it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and

plan is entered as herein provided, the plan and

(6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

"Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal. shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: Provided, however, That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken. the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action of he ald success of the advantaglish

plan is entered as herein provided, the plan and

said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it.

"(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

- "(h) This chapter shall not be construed as to modify or repeal any prior, existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: *Provided*, however, That the initiation of proceedings or the filing of a petition under section 80 shall not constitute a bar to the same taxing agency or instrumentality initiating a new proceeding under section 81 thereof.
- "(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

## "TERMINATION OF JURISDICTION

"SEC. 84. Jurisdiction conferred on any court by section 81 shall not be exercised by such court after June 30, 1940, except in respect of any proceeding initiated by filing a petition under section 83 (a) on or prior to June 30, 1940."

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Approved, August 16, 1937.

# In the District Court of the United States for the Southern District of California, Northern Division

## No. 4575-Bkey

IN THE MATTER OF THE PETITION OF LINDSAYSTRATHMORE IRRIGATION DISTRICT, AN INSOLVENT
TAXING AGENCY, FOR CONFIRMATION OF A PLAN FOR
THE COMPOSITON AND READJUSTMEINT OF ITS
DEBTS

#### OPINION

## Appearances:

For Petitioner:

MESSRS. MITCHELL, SILBERBERG, ROTH & KNUPP,

JAMES R. McBride, Los Angeles, California.

For Respondents:

W. Coburn Cook, Turlock, California.

For Intervenor:

BEN HARRISON,
United States Attorney, Los Angeles,
California.

HENRY A. JULICHER,
Attorney, Department of Justice,
Washington, D. C.

YANKWICH, District Judge:

Lindsay-Strathmore Irrigation District, which we shall call "the district," is an irrigation district, organized under the "California Irrigation District Act," approved March 31, 1897, and the Acts amending and supplementing it. It comprises approximately 15,260 acres of land located in Tulare County, California, and is organized for the purpose of constructing, improving, maintaining, and operating improvement projects and works devoted chiefly to the improvement of lands within its boundaries for agricultural purposes. Alleging that it is a taxing agency and instrumentality within the meaning of Chapter X of the Bankruptcy Act, approved August 16, 1937, it filed on September 21, 1937, a "petition for confirmation of a plan for composition or re-adjustment of its debt." The insolvency arises by reason of its inability to meet its obligations as to two bond issues issued by it under the provisions of the California Irrigation District Act. Attached to the petition is a plan of composition and re-adjustment, accepted by the petitioner and creditors owning approximately 87 percent in amount of the securities affected by the plan, who have consented to the filing of the petition. It is aimed to pay in cash to the holders of the bonds a sum equal to 59.978 cents for each dollar of the principal amount of each bond, in full payment, discharge, and satisfaction of all amounts of principal and interest due on such bond. The payment to be made out of a

loan which the Reconstruction Finance Corporation has authorized and agreed to make to the district. Upon the filing of the petition, I entered an order approving it as properly filed under Chapter X, and set December 3, 1937, as the time and place for the hearing on the petition. On September 30, 1937, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, and of the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva A. Parrington, trust, and C. A. Moss gave notice of motion to dismiss the petition upon the ground, among others, that the Court was without jurisdiction of the subject matter of the proceeding and that Chapter X of the Bankruptcy Act-Sections 81 to 84 inclusive-is unconstitutional and void. The matter coming up for hearing on October 11, 1937, I certified to the Attorney General the fact that the constitutionality of the Act was drawn in question, under the provisions of the judiciary reform Act approved August 24, 1937 (Public, No. 352, 75th Congress, Chapter 754), and allowed the Government to intervene and defend the Act's constitutionality.

Chapter X, Sections 81 to 84 of the Bankruptcy Act, under which the petition was filed, were intended to supplant Section 80 of the Act, which was stricken down by the decision of the Supreme Court in Ashton v. Cameron County Water District (1936), 298 U. S. 513.

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The presumption in favor of constitutionality calls for a ruling in favor of the validity of an Act of the Congress and commands us to resolve all doubts in favor of validity unless the contrary is made to appear beyond a reasonable doubt. In effect, this means that we must sustain the new Act unless the decision in Ashton v. Cameron County District, supra, compels a different conclusion. This is especially true when we consider an Act passed to replace an Act invalidated by our highest court. (See Wright v. Vinton Branch (1937) 300 U. S. 440). It is not necessary to enter into a detailed comparison of the two Acts. While the aim of the old Act was "re-adjustment" of debts of insolvent public agencies named in it, the new Act aims at "composition" of the debts of the agencies coming under it, insolvency existing. Bothplans contemplate a voluntary petition containing a plan approved by a certain number of its creditors-thirty to fifty-one per cent in the old Act, fifty-one per cent in the new Act, the preliminary approval by the court of the petition, due notice of hearing for final confirmation of the plan of reorganization by the Court, if approved by more than a majority of the creditors, the percentage varying in the old Act from fifty-one upward and being fixed at two-thirds in all cases in the new Act. The confirmation of the plan in both instances and the payment of the consideration, under both enactments, has the effect of discharging the debtor from all debts or liabilities covered by the plan.

The new Act disowns, as did the old one, any intention to interfere with the exercise of State governmental authority. Subdivision (i) of Section 84 reads:

(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures thereof.

The agencies to which the old Act applied included:

(a) Any municipality or other political subdivision of any State, including (but not hereby limiting the generality of the foregoing) and county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement, or other districts (hereinafter referred to as a "taxing district") (Bankruptcy Act, Section 80 (a)).

## The new statute is made to apply to-

(1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands

therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public school or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality (Bankruptcy Act, Chapter X, Sec. 81).

The scope of both Acts is limited as to time—the old Act expiring on January 1, 1940, the new Act on June 30, 1940. In the Report of the Committee on the Judiciary of the House of Representatives, on the Act, its aim is stated:

The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to, and believes that H. R. 5969 is not invalid or contrary to the reasoning of the majority opinion in the 5-to-4 decision. The act which was declared unconstitutional designated the instrumentalities included in

its provisions as political subdivisions of the State, and the Supreme Court determined that it was beyond the power reposed in Congress by article I, section 8, clause 4, of the Federal Constitution. "To establish uniform laws on the subject of bankruptcies," to pass an act to interfere with the States in the control of their fiscal affairs.

The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill.

As the statute which was declared unconstitutional was held to be within the subject of bankruptcies and uniform in its application, a fortiori, the present bill is adequately related to the general subject of bankruptcies, and does not conflict with the fifth amendment of the Federal Constitution as to due process of law (Report No. 517, 75th

Congress, First Session).

It is evident that the Committee assumed that the old statute had been declared unconstitutional merely because the Congress had used the generic phrase "any municipality or other political subdivision of any state." The new Act seeks to overcome this infirmity by enumerating specifically certain tax instrumentalities without grouping them under a generic title.

But the old Act included specifically irrigation districts, as does the new. And the new Act includes specifically municipalities as did the old.

The new Act attempts to draw a distinction between taxing bodies which are true governmental subdivisions—such as counties, cities, villages, boroughs, and those which are government agencies of limited scope or between what are strictly municipal corporations and public or quasi-municipal corporations, of more limited scope. The distinction is made often in public law, especially in dealing with the power to tax and liability for tort, between strictly governmental and proprietary functions. (See Helvering v. Powers (1934), 293 U. S. 214; Ohio v. Helvering (1934), 292 U. S. 360; Brush v. Commissioner (1937), 300 U. S. 352; Yolo v. Modesto Irrigation District (1932), 216 C. 274; 13 P (2) 908).

But a governmental body does not lose its character as such merely because it may engage in activities of a proprietary nature. If it is an agency of the state for the performance of certain functions, the fact that the functions are limited does not alter its status. An agency of the state for the performance of governmental functions it still re-

mains. Ultimately, the test is, Does it have the attributes of sovereignty? Do its activities constitute a public as distinguished from a private enterprise? In carrying out its functions, does it exercise that great prerogative which belongs to sovereignty only—the power to tax and assess property within its boundaries for the upkeep of its activities? If it does, then it is a state agency or instrumentality, although it does not fit into any of the old rubrics under which governmental agencies were classified in less complex days—villages, towns, cities, boroughs, and the like.

As I read the decision in Ashton v. Cameron County District, supra, it is grounded upon this proposition.

The gist of the majority opinion is contained in the statement:

Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair state powers—pass laws inconsistent with the idea of sovereignty" (Ashton v. Cameron etc., 297 U. S. 513, 531). [Italics added.]

A dissenting opinion often helps clarify the import and meaning of the majority opinion.

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The minority opinion does not seek to draw any distinction between public or quasi-municipal bodies and true state subdivisions. As the court was not dealing with a municipality, but with a water and irrigation district, it is quite certain that the minority represented by the Chief Justice, Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo, who wrote the opinion, would have based their dissent upon the proposition that, granted the principles of the majority opinion, the water district, because of its limited powers, was not a political subdivision of the state. They did not do this. Instead, they asserted boldly that, while immunity from federal bankruptcy acts would attach to the state, it should not attach to local governmental units. Mr. Justice Cardozo says:

There is room at least for argument that within the meaning of the Constitution the bankruptcy concept does not embrace the states themselves. In the public law of the United States, a state is a sovereign or at least a quasi-sovereign. Not so, a local governmental unit, though the state may have invested it with governmental power. Such a governmental unit may be brought into court against its will without violating the Eleventh Amendment: Lincoln County v. Luning, 133 U.S. 529; Hopkins v. Clemson College, 221 U. S. 636, 654; It may be subjected to mandamus or to equitable remedies. See, e. g. Norris v. Montezuma Valley Irrigation District, 248 Fed. 369, 372; Tyler County V. Town, 23 F. (2) 371, 378; "Neither public corporations nor political subdivisions are clothed with that immunity from suit which belongs to the State alone by virtue of its sovereignty." Hopkins V. Clemson College, supra (Ashton V. Cameron Co., etc., supra, at 542). [Italics added.]

It is evident to me that the decision was not grounded upon the fact that the power of the Texas Legislature to establish water districts was derived from the general constitutional provision permitting the creation of political subdivisions of the state with power to sue and be sued, issue bonds, levy and collect taxes. The majority opinion intended to apply the limitation to all "taxing agencies" which exercise, under the authority of the State, the attributes of sovereignty. That this is the import of the decision is also shown by what the Court says about it in Brush v. Commissioner, 300 U. S. 352.

There the Court was considering the immunity of state governmental agencies from federal taxation. It held that a municipality in supplying water to its inhabitants engaged in a governmental function which brought immunity from federal income tax to an engineer employed in its Water Department. Speaking of the scope of Ashton v. Cameron County District, supra, the Court said:

We recently have held that the bankruptcy statutes could not be extended to municipalities or other political subdivisions of a state. Ashton v. Cameron County Water District, 298 U. S. 513. The respondent there was a water-improvement district organized by law to furnish water for irrigation and domestic uses. We said (pp. 527-528) that respondent was a political subdivision of the state "created for the local exercise of her sovereign powers \* \* \*. Its fiscal affairs are those of the State, not subject to control or interference by the National Government; unless the right so to do is definitely accorded by the Federal Constitution." In support of that holding, former decisions of this court with respect to the immunity of states and municipalities from federal taxation were relied upon as apposite. question whether the district exercised governmental or merely corporate functions was distinctly in issue. The petition in bankruptcy alleged that the district was created with power to perform "the proprietary and/or corporate function of furnishing water for irrigation and domestic uses The district judge held that the district was created for the local exercise of state sovereign powers; that it was exercising "a governmental function"; that its property was public property; that it was not carrying on private business, but public business. That court, having denied the petition for want of jurisdiction, the district submitted a motion for a new trial in which it assigned, among other things, that the court erred in holding that petitioner was created for the purpose of performing functions, "for the reason that the Courts of

Texas, as well as the other Courts of the Nation, have uniformly held that the furnishing of water for irrigation was purely a proprietary function \* \* \*." Substantially the same thing was repeated in other assignments of error. In the petition for rehearing in this court, the district challenged our determination that respondent was a political subdivision of the state "created for the local exercise of her sovereign powers," and asserted to the contrary that the facts would demonstrate that "respondent is a corporation organized for essentially proprietary purposes." It is not open to dispute that the statements quoted from our opinion in the Ashton case were made after due consideration, and the case itself decided and the rehearing denied in the light of the issue thus definitely presented. Compare Bingham v. United States. 296 U. S. 211, 218-219 (Brush v. Commissioner, 300 U.S. 352, 368-369). [Italics added. 1

(And see Southern Sierras Power Company v. Imperial Irrigation District (1937), 87 Fed. (2) 353.)

It is clear that the Court did not draw any line between governmental functions exercised by municipal corporations and governmental functions exercised by a public or quasi-municipal corporation of more limited scope. The distinction it drew was between governmental and corporate functions. Corporate functions are functions which may be

exercised by any private corporate body. They do not partake of a public nature.

Public functions, performed by an agency created by the State, whose officers are elected by voters having the qualifications of general electors of the State, and which exercises the powers of eminent domain and taxation—the latter two among the two most important attributes of sovereignty and without which there could be no sovereignty—are clearly governmental.

The irrigation district, which seeks relief under this enactment, is of this character. It is one of the instrumentalities of the State, which fall under the interdict of Ashton v. Cameron, etc., supra. Since the enactment in 1887, of the first Irrigation District Act in California, commonly known as the "Wright Act," California courts have had many occasions to determine the character of the districts created under it. So has the Supreme Court of the United States in upholding the Act. A California irrigation district, while not a political subdivision of the State, is a public corporation for municipal purposes and its officers are public officers of the State. (See Fallbrook Irrigation District v. Bradley (1896) 164 U.S. 112; In re Madera Irrig. Dist. (1891) 92 C, 296, 28 P. 272; Lindsay-Strathmore Irrig. Dist. v. Superior Court (1920) 182 C. 315, 187 P. 1056; Turlock Irrig. Dist. v. White (1921) 186 C. 183, 198 P. 1060; Crawford v. Imperial Irrig. Dist. (1927) 200 C, 318, 253 P. 726; Wood v. Imperial Irrig. Dist. (1932) 216 C. 748,

17 P. (2) 128; Yolo v. Modesto Irrig. Dist. (1932) 216 C. 748, 13 P. (2) 908;) The case last cited contains one of the latest declarations of the Supreme Court of California on the subject. An irrigation district is there denominated "a quasi-municipal corporation." In Morrison v. Smith Brothers, Inc. (1930) 211 C. 36, 40, 293 P. 53, irrigation districts are called "state agencies performing a governmental function." In Sutro Heights Land Co. v. Merced Irrig. Dist. (1931) 211 C. 670, 690, 296 P. 1098, an irrigation district is referred to as "an agency of the state, and the use to which water owned and controlled by it is put to a public use." The same court, in order to give to irrigation districts immunity from liability for torts, considers them state agencies. (See Whiteman v. Anderson-Cottonwood Irrigation District (1922) 60 C. A. 234, 212 P. 706; Nissen v. Cordua Irrig. Dist. (1928) 204 C. 545, 269 P. 171; Morrison v. Smith Bros. (1930) 211 C. 36, 293 P. 53; Yolo v. Modesto Irrig Dist., supra.) (And on the general nature of instrumentalities of this character, as state agencies performing functions of government, see Houck v. Little River Drainage District (1915) 239 U. S. 254.)

Irrigation in California is "a public use" and the power of eminent domain may be exercised in behalf of it (Constitution of California, Art. I, Sec. 14; California Code of Civil Procedure, Sec. 1241; States, 1911, p. 1407).

The manner in which irrigation districts are created, the fact that they are called into being by an act of the Supervisors of the County in which the major part of the lands are located, upon petition of the property owners, that the officers of the district are elected by a vote not of property owners, but of all electors within the district, the fact that the officers are subject to recall, as are all other officers of the State, the fact that before bonds are issued by the Board of Directors of an irrigation district for the purpose of constructing or acquiring works or other property, the plans for such works and the amount of the bonds to be issued, must be approved by the California Districts Securities Commission, consisting of the State Attorney General, the State Engineer, the Superintendent of Banks and two other members appointed by the Governor of the State, who must report on the feasibility of the project—these, and other facts, serve to show the character of an irrigation district as a public instrumentality and agency of the State, subservient to it (Stats. 1897, p. 254; Stats, 1931, p. 2263).

Within their limited scope, irrigation districts exercise the peers of sovereignty. Like sovereigns, they enjoy immunity from liability for torts. They owe their existence to the State, and exercise state functions within their area, just as effectively as municipalities. Clearly, they are of the same type as the water and irrigation company which was before the Supreme Court in Ashton v. Cameron

County Water District, supra, and of which the Court said:

that the right to borrow money is essential to its operations. Houck v. Little River Drainage District, 239 U. S. 261-263; Perry v. United States, 294 U. S. 331. Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution (Ashton v. Cameron, etc., supra, at 528).

I feel compelled by this decision to hold that the new enactment, Chapter X, of the Bankruptcy Act, insofar as it applies to irrigation districts of the type of the petitioner, is constitutionally vulner-

able, as was the old.

As a student, exercising private judgment, I agree with the conclusion of the dissenters that immunity from interference through federal bank-ruptcy laws, even if applicable to states, should not be extended to state instrumentalities, whether they be municipal, quasi-municipal, or public corporations. However, as a judge of a lower court, I cannot exercise private judgment, but must follow the opinion of the majority, which, as I read it, extends the immunity to all governmental agencies created by a State for the performance of public functions.

The motion to dismiss will be granted.

Exception to the petitioners and the intervenors.

Dated this 13th day of November 1937.

LEON R. YANKWICH, United States District Judge.

## In the District Court of the United States for the Southern District of California, Northern Division

### No. 4575

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY, FOR CONFIRMATION OF A PLAN FOR THE COMPOSITION AND READJUSTMENT OF ITS DEBTS.

#### JUDGMENT OF DISMISSAL

The motion of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder as trustee for Eva A. Parrington trust, G. A. Moss, and James H. Jordan, creditors of Lindsay-Strathmore Irrigation District, to dismiss this cause, and the return of said creditors to the Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered herein coming on regularly to be heard by the Court the 8th day of November 1937, and it

appearing that in this cause Lindsay-Strathmore Irrigation District filed its verified petition setting forth a plan for composition and readjustment of its debts under Sections 81, 82, and 83 of Chapter X of the National Bankruptcy Law, as amended, and that this Court made an Order Approving the Petition as Properly Filed and for Notice to Creditors on September 21, 1937, and that this Court on September 22, 1937, made an Order to Show Cause Why an Injunction Should Not Issue and Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered, and fixed Monday the 11th day of October 1937, at Fresno, California, as the time and place for the return to said Order; said creditors of said District, bondholders thereof, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, deceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, trustee for Eva Parrington trust, C. A. Moss and James H. Jordan, having made their return to said Order showing cause why an injunction should not issue and why an interlocutory decree making the plan temporarily operative should not be entered; and James Irvine, one of said creditors, having filed herein his proof of claim as required by the Court's order, from which it appears that he is a creditor of Lindsay-Strathmore Irrigation District and the owner and holder of bonds

of said district, described in the petition herein, in the principal amount of \$18,500.00, of which bonds in the amount of \$14,000.00 have matured, and attached to which are interest coupons in the amount of \$3,825.00 which have matured, and which bonds and coupons have all been severally presented for payment;

And it further appearing that said James Irvine and the other said creditors, as shown by their return, are creditors of the Lindsay-Strathmore Irrigation District and the owners and holders of bonds and interest coupons of said District adversely affected by the proposed plan for composition and readjustment of the debts of said District, and the said creditors having duly made their motion to dismiss this cause, which said motion for dismissal and return to said order were based, amongst other things, upon the unconstitutionality of the said Sections 81, 82, and 83 of the Bankruptcy Act of 1898, as amended, and said return and motion coming on regularly to be heard by the Court on the 11th day of October 1937;

And it appearing therefrom that the constitutionality of the statutes aforesaid was drawn in question by the pleadings of the said creditors, this Court certified such fact to the Attorney General of the United States, and upon his application the case was duly continued to November 8, 1937, whereupon an Order was made permitting the Attorney General of the United States to intervene

as a party to said cause and to be heard on the question of the constitutionality of the Act, an exception being allowed to the respondent creditors;

And the said return of the Order having been submitted to the Court and the motion to dismiss the cause having been likewise submitted to the Court and by the Court considered, and the Court being now fully advised in the premises, determines that Sections 81, 82, and 83 of the Bankruptcy Act of 1898, as amended, are unconstitutional and the proceedings taken thereunder void;

Wherefore, it is hereby ordered, adjudged, and decreed that the said order to show cause why injunction should not issue and why interlocutory decree making plan temporarily operative should not be entered be and the same is hereby vacated and set aside and the petition of lindsay-strathmore irrigation district herein for confirmation of a plan for the composition and readjustment of its debts be and the same is hereby dismissed with prejudice, solely upon the ground that the statute under which the proceeding is brought is unconstitutional. An exception to this order and judgment is hereby allowed to the debtor, Lindsay-Strathmore Irrigation District, and to the intervenor.

Dated: December 2nd, 1937.

LEON R. YANKWICH, United States District Judge. Approved as to form as provided in Rule 44.

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JAMES R. McBride,

By GUY KNUPP.

Attorneys for Lindsay-Strathmore
Irrigation District.

BEN HARRISON, U. S. Dist. Atty.,
Attorney for Intervenor.

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# In the Supreme Court of the United States

OCTOBER TERM, 1937'

#### No. 757

THE UNITED STATES OF AMERICA, APPELLANT

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTH-ERN DIVISION

#### BRIEF FOR THE UNITED STATES

#### OPINION BELOW

The opinion of the United States District Court for the Southern District of California, Northern Division (R. 71)<sup>1</sup> is not yet reported.

#### JURISDICTION

A certificate was issued to the Attorney General (R. 65) and the United States intervened (R. 66–68) under the Act of August 24, 1937, c. 754, 50 Stat. 751. The judgment of the court below was

Record references are to No. 772, Lindsay-Strathmore Irrigation District v. Bekins et al. The parties have stipulated that a single record would be printed in this court (R. 104). The records are identical except for the proceedings on appeal; those proceedings in No. 757 are added to the record in No. 772.

entered on December 2, 1937 (R. 89). Appeal was allowed on (R. 101).

Appellees' main to dismiss or affirm was denied, and probable jurisdiction noted by this Court on February 28, 1938. The jurisdiction of this Court rests on Section 2 of the Act of August 24, 1937.

#### QUESTION PRESENTED

Whether the Act of August 16, 1937, is a valid exercise by Congress of its power "to establish " " uniform laws on the subject of bank-ruptcies throughout the United States."

#### STATUTES INVOLVED

The Act of August 16, 1937, is set forth in the Appendix, infra, pp. 89-100.

#### STATEMENT

The Lindsay-Strathmore Irrigation District includes some 15,260 acres of land located in Tulare County, California, and is an irrigation district organized on October 25, 1915, under the California Irrigation District Act of March 31, 1897, as amended (Deering's General Laws, Act No. 3854), for the purpose of constructing, improving, maintaining, and operating irrigation projects and works devoted chiefly to the improvement of lands within its boundaries for agricultural purposes (R. 1, 5).

On September 21, 1937, the District filed a petition for confirmation of a plan for composition of its debt under Chapter 10 of the Bankruptey Act of August 16, 1937. It alleged insolvency by reason of its inability to meet its obligations as to two bond issues, in the aggregate amount of \$1,635,000, issued by it under the provisions of the California Irrigation District Act (R. 2). The petition alleges that the low price of agricultural products prevented the landowners from paying their assessments; in 1932, when the District last attempted to collect taxes to pay bond maturities and interest, the delinquency was 47 per cent (R. 5).

Creditors owning about 87 per cent of the securities affected by the plan have agreed to the plan of composition and have consented to the filing of the petition (R. 3, 8). Under the plan the District agrees to pay in cash to the holders of the bonds 59.978 cents for each dollar of the principal amount of each bond, this will be in full payment, discharge, and satisfaction of all amounts of principal and interest due on such bonds (R. 3). The payments will be financed by a loan which the Reconstruction Finance Corporation has agreed to make to the District (R. 4).

On October 2, 1937, Milo W. Bekins, trustee, together with certain other bondholders, appellees here, moved to dismiss the petition upon the ground, among others, that Chapter 10 of the Bankruptcy Act, Sections 80-84, inclusive, is unconstitutional and void (R. 21). Similar grounds were alleged in the return to the order to show cause why the plan should not become temporarily operative (R. 25).

Exhibits to the return indicate that the creditors had on August 31, 1937, obtained a writ of mandate from the Superior Court of Tulare County, directing the County Board of Supervisors to levy and collect taxes sufficient to pay the amounts due these creditors (R. 50) and that the proceedings had been suspended by the state court (R. 55) on the return of the District (R. 52) alleging the filing of a petition in the federal bankruptcy court. One other creditor separately appeared and joined in the motion and return of these creditors (R. 24, 56). The aggregate amount of their alleged bondholding is \$156,000 (R. 21-22, 24); this is 9.5 percent of the outstanding bonds of \$1,635,000.

Under the provisions of the Act of August 24, 1937 (c. 754, 50 Stat. 751), the district judge certified to the Attorney General that the constitutionality of an Act of Congress was drawn in question (R. 65). The United States petitioned to intervene and defend the constitutionality of the Act (R. 66), which was allowed on November 8, 1937 (R. 68).

On November 13, 1937, the motion to dismiss was granted (R. 81); judgment was entered December 2, 1937 (R. 89). The judge felt compelled by the decision in Ashton v. Cameron County District, 298 U. S. 513, to enter this judgment, although "as a student, exercising private judgment, I agree with the conclusion of the dissenters" (R. 81).

#### SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

- 1. In holding that chapter 10 of the Bankruptcy Act, as amended by the Act of August 16, 1937, c. 657, 50 Stat. 653, is unconstitutional as applicable to the petition of the Lindsay-Strathmore Irrigation District herein.
- 2. In dismissing the petition of the Lindsay-Strathmore Irrigation District on the ground that chapter 10 of the Bankruptcy Act, under which the petition was filed, is unconstitutional and void.

#### SUMMARY OF ARGUMENT

I

The Act of August 16, 1937, adding chapter 10 to the Bankruptcy Act, is a constitutional exercise of the power "to establish uniform laws on the subject of bankruptcies throughout the United States."

A. At the time of its enactment two to three thousand municipalities, improvement districts, and other taxing agencies were in default on their obligations; many of them were hopelessly insolvent. The creditors were in an equally unfavorable position. Their only remedy, a writ of mandamus directing the collection of a tax sufficient to pay the amounts due, was wholly futile when the taxpayers were unable even to pay the normal taxes. An agreement reducing the amount of the indebtedness to a figure which the taxing agency

can pay is obviously the only solution either for the debtor or for the creditor. Yet in a large proportion of the cases minority creditors, either because of cupidity or because of obstinacy, have blocked the consummation of a plan regarded as satisfactory both by the debtor and the majority of its creditors.

Legislative authority is necessary to coerce the obdurate minority into acceptance of a satisfactory plan. This legislation is beyond the powers of the states. Sturges v. Crowninshields, 4 Wheat, 122; Ogden v. Saunders, 12 Wheat. 213. It is, therefore, plain that the urgently needed relief can be obtained only through Federal legislation.

B. Chapter X was enacted to grant this relief. The bankruptcy courts are given jurisdiction over petitions filed by improvement and school districts and by municipalities. With the petition there must be presented a plan of composition agreed to by 51 per cent of the creditors. After hearing, the judge may confirm the plan if two-thirds of the creditors have agreed, if he finds that the plan fair, and if the taxing agency is authorized by law to take the contemplated steps. The powers of the bankruptcy court do not extend to interfering with the petitioner's governmental powers or revenues, or with any control exercised by the state over the petitioner.

C. The relief of public debtors lies within the bankruptcy power. Story's conclusion that the

power may be applied to any debtor is supported by the meager history of this clause in the Federal Convention. It finds even more support in the expanding development which the Congress has given the bankruptcy power. As this Court has remarked, this has been a history "of progressive liberalization in respect of the operation of the bankruptcy power" which demonstrates "in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed." Continental Bank v. Rock Island Railway, 294 U. S. 648, 668, 671. Similarly, the definitions of the bankruptcy power which have been approved by this Court are of the broadest character, and describe it as relating to "any \* class" of debtors and as relating to "the subject of any person's general inability to pay his debts."

In view of the separable application of the Act, the Court need not go beyond the question whether the bankruptcy clause can include irrigation districts. There is nothing in the public nature of these debtors which requires that they be carved out of the bankruptcy field. Certainly, the practical reasons for a bankruptcy law are peculiarly applicable to these districts, which have a large indebtedness and an uncertain income, and against which the creditors have no practicable remedy. Nor is there anything in the nature of their status as public corporations which requires their exemption from the bankruptcy power. It has long been

settled that their creditors may bring suit against them in the Federal courts, that these courts may issue mandamus to compel the collection of taxes, and, indeed, that the court may itself collect the taxes necessary to pay the plaintiff creditors if there is an analogous procedure available to creditors in the state courts. Since the general judicial power exercised under the diversity of citizenship clause extends to the debts of these taxing units, it seems perfectly plain that the debts are similarly within the judicial power when authorized by Congress under the specific bankruptcy power.

D. Because the authority of the debtor may vary according to state law does not destroy the uniformity of the Act of August 16, 1937. Hanover National Bank v. Moyses, 186 U. S. 181, 188, 190. Nor is there any substance to the objection that the creditors' claims are taken without just compensation; this is the very purpose of the bankruptcy power.

Even in cases where the debtor can file its petition only by virtue of statutory consent by the state, there is no impairment of the obligation of contracts by the state when it grants this consent. The impairment is accomplished in the bankruptcy court, and not when the state grants its consent.

II

The Act invades none of the reserved powers of the states, and is in no way inconsistent with the implications of our dual system of government.

A. The Tenth Amendment reserves to the states only "the powers not delegated to the United States by the Constitution." The plain meaning of this language is confirmed by the history of its adop-Its purpose, as then expressed, was merely to declare that the central government was to be one of delegated powers. This declaration was desired to ensure (1) that the Congress would not exercise powers which had not been delegated, and (2) that the states could continue to exercise those powers which they had not granted to Congress. As Madison explained in introducing the Amendment in Congress, it is probably unnecessary "but there can be no harm in making such a declaration." That the Tenth Amendment was not to operate as an independent limitation upon the powers of Congress is made doubly plain by the deliberate rejection of proposals that all powers not "expressly" granted should be reserved to the states. As Story has said, "The attempts to force upon this language an abridging or restrictive influence are utterly unfounded in any just rules of interpreting the words or the sense of the instrument."

The plain purpose of the Amendment has been conferred by more than a century of constitutional history. From Chief Justice Marshall, in *Martin* v. *Hunter's Lessee*; 1 Wheat. 304, 325 to *United States* v. *Sprague*, 282 U. S. 716, 733, the Court has repeatedly held that the Tenth Amendment adds

nothing to the Constitution. However, several recent decisions of this Court, such as Hopkins Savings Association v. Clearly, 296 U. S. 315 and United States v. Butler, 297 U.S. 1, have indicated a view that this Amendment does have some effect as an independent limitation upon the Federal power. The opinions in these cases cannot, however, be taken sub silentio to have overruled so important and so futile a constitutional doctrine. The accepted interpretation of the Tenth Amendment has been retained in contemporaneous decisions such as Ashwander v. Tennessee Valley Association, 297 U. S. 288.

It may be assumed that the scope of Federal powers in exceptional circumstances is limited by the implications of the dual system of the Federal government. But the first question must always be whether or not the power has in fact been granted to the national government; only then can it be determined whether or not the power has been reserved to the states as one "not delegated to the United States."

B. It is perfectly plain that the Act of August 16, 1937, is wholly consistent with our dual system of government. If there were doubt, this conclusion is affirmatively established by the Act itself.

The proceedings are wholly voluntary, and the taxing agency can file its petition only if the state consents. The court is without any control over the fiscal affairs or governmental activities of the tax-

ing agency. The power of the bankruptcy court is limited to the approval of the plan offered by the taxing agency and by two-thirds of its creditors or to its rejection. Apart from the coercion of the minority creditors, composition "is a proceeding wholly voluntary on both sides." Cumberland Glass Co. v. De Witt, 237 U. S. 447, 453. To remove all doubt, Congress has made specific requirement that the judge find that the plan is consistent with state law, that he interfere with no governmental power or revenues of the petitioner, and that nothing should be construed to limit or impair the control of the state.

Moreover, the State of California itself has authorized its taxing districts to proceed under Federal bankruptcy statutes. Appellees should not be heard to argue for a sovereign immunity which the state itself has renounced. More generally, some sixteen states have expressly sanctioned their taxing agencies to invoke the aid of the Federal bankruptcy courts. When both the national legislature and the states have concluded that the bankruptcy statute is consistent with our dual system, this Court should be slow to reject their judgment. So far as the bankruptcy power may be analogized to the taxing power, it should be noted that the consent of the state removes any objection to the application of this Act to the taxing agencies of the state.

C. Ashton v. Cameron County District, 298 U. S. 513, is inapplicable to this Act; but if the Court thinks that ruling so broad as to cover Chapter X, it is respectfully urged that it be modified or over-ruled.

In this case, as in Wright v. Vinton Branch, 300 U. S. 440, 457, the considered judgment of the Congress that the constitutional objections of this Court had been overcome, gives to the Act a presumption of constitutionality of perhaps uncommon weight.

Chapter IX provided for "readjustment" of the debts of any municipality or political subdivision. The bankruptcy court could require the taxing district to submit information disclosing the conduct of its affairs. It could direct the rejection of executory contracts of the taxing district and could require the district to open its books and records to any creditor. The order of the court was binding on the taxing district as well as the creditors. None of these powers is present in chapter X. This Act is a composition act and, as this Court has often held, compositions are contractual rather than coercive so far as the debtor and its majority creditors are concerned. Nassau Works v. Brightwood, 265 U. S. 269, 271.

Moreover, the Cameron County District was held to be a political subdivision of the state; indeed, the Act was applicable only to political subdivision. Under California law, however, districts such as the Lindsay-Strathmore Districts have repeatedly been held not to have a status of a political subdivision. See Wood v. Imperial Irrigation District, 216 Cal. 748, 753. The Act, accordingly, is not controlled by the Ashton case as it is applied in this case. Since its provisions are separable, it is unnecessary to consider whether or not it would be valid if applied to taxing agencies which were political subdivisions of the state.

It is true that the opinion in the Ashton case is couched in broad terms. If construed to be applicable in this case, the government respectfully asks that it be reexamined and overruled. Chapter X is necessary for the relief of taxing agencies and their creditors and it is a valid exercise of the bankruptcy power. It contains no color of interference with the affairs of the taxing agencies which voluntarily seek its benefits. The decision that it is none the less unconstitutional would have a catastrophic effect, both upon the taxing agencies and their creditors, and upon the constitutional development of the nation.

#### ARGUMENT

T

THE ACT OF AUGUST 16, 1937, IS A VALID EXERCISE OF THE BANKRUPTCY POWERS GRANTED TO THE CONGRESS

The sole question presented to this Court is whether the Act of August 16, 1937 (c. 657, 50 Stat. 653; U. S. C., Title 11, Secs. 81-83), adding Chapter X to the Bankruptcy Act of 1898, is a constitutional exercise of the power granted to Congress, by the fourth clause of Section 8 of Article I, "to establish \* \* uniform laws on the subject of bankruptcies throughout the United States." 2

#### A. The necessity for Federal legislation

1. The need for relief.—The Act of August 16, 1937, was enacted to remedy a situation which was near to intolerable both for the taxing agencies and for their creditors.

In January 1934, when hearings on the proposed Chapter IX were held, some 2,019 municipalities,

<sup>&</sup>lt;sup>2</sup> In addition to that of the court below, decisions have been entered by two District Courts. In each case the constitutionality of Chapter X was sustained. In re City of Fort Lauderdale, Fla., and In re City of Hollywood (S. D., Fla.), decided December 8, 1937, and In re Drainage District No. 7 of Poinsett County, Ark., 21 F. Supp. 798 (E. D., Ark.).

<sup>&</sup>lt;sup>a</sup> The Act enumerates, as within the term "taxing agency," various types of agricultural, local, and road improvement districts; school and port improvement districts; and municipalities (*infra*, pp. 89-90.) This case, of course, presents the constitutional question only with respect to irrigation districts.

improvement districts, and other taxing agencies were known to be in default on the principal or interest, or both, of their obligations. Since the investigation did not cover the smaller taxing units, or the taxing agencies which had not been subjected to action by their creditors, the number of actual defaults was probably much larger than this figure. Estimates ran as high as 4,000 defaulting taxing units.5 The taxing agencies in default included large cities such as Detroit, Miami, Asheville, and Mobile, as well as a host of small communities and local improvement districts; they were located in 41 of the 48 States.\* The defaulted bonds totalled between \$1,000,000,000 and \$2,800,000,000. most recent figures indicate that the larger taxing units had eliminated their defaults but that some 3,079 of the smaller units remained in default on March 1, 1938.\*

8 Relief for State Subdivisions, 33 Col. Law Rev. 1050.

<sup>&#</sup>x27;Hearings before Subcommittee, Committee on the Judiciary, Senate (S. 1868 and H. R. 5950), 73d Cong., 2d Sess., p. 12.

<sup>·</sup> Senate Hearings, 73d Cong., supra, p. 12.

<sup>&</sup>lt;sup>1</sup> Relief for State Subdivisions, 33 Col. Law Rev. 1050; Legislative Aid to Creditors of Political Subdivisions, 46 Harv. Law Rev. 1317; Securities and Exchange Commission, Report on Protective Committees, Part IV, p. 1; Hearings, Senate Committee on Banking and Currency on S. 3255, 75th Cong., 3d Sess., p. 128.

Senate Hearings, 75th Cong., supra, p. 128; Summary of Municipal Debt Defaults as of March 1, 1938, BOND BUYER; see also Hearings before Subcommittee on Bankruptcy and Reorganization, Committee on the Judiciary (H. R. 2505, 2506, 5403, 5969), 75th Cong., 1st Sess., p. 18.

The Congressional hearings and debates contain many instances of hopelessly insolvent taxing agencies. For example, a Florida city in 1925 paved streets, installed sewers, etc., for a population of 15,000 to 20,000 people; after the collapse, only half a dozen families remained to enjoy these improvements and a per capita indebtedness of \$11,000. A Texas water improvement district had a bonded indebtedness of \$100 per acre, to be paid by assessments against lands valued at \$75 per Another Florida community was directed by mandamus to levy and collect taxes amounting to 49 per cent of the assessed value of the property, in order to meet the interest and regularly maturing principal on its outstanding bond issues for a single year." Not all of the defaulting taxing agencies, of course, are in so desperate a condition. But respondents hardly will deny that many hundreds of these taxing agencies will never be able to pay more than a small fraction of the face value of their outstanding bonds.

Such hope as these communities might have to regain a normal degree of well-being is blocked by the over-indebtedness itself. Property owners, of course, will not improve their land, while residents and industries alike will avoid the district, if there is an ever-present threat of confiscatory tax levies

House Hearings, 75th Cong., supra, p. 122.

<sup>10 81</sup> Cong. Rec. 6313.

ii House Hearings, 75th Cong., supra, pp. 20-21.

to pay outstanding bonds the amount of which approaches or exceeds the value of the property.12

Nor is the position of the creditors any more favorable. The taxing agency has no property against which a judgment can be executed; the taxpayers are not personally liable for the debts of the agency. The only practicable remedy for the bondholder is to obtain a writ of mandamus, directing the tax officials to collect a tax sufficient to pay the amounts due.13 But, where there has already been a default, the tax is so large in relation to his means that it simply cannot be collected from the typical property owner. This, in turn, will require that the property be sold for taxes. The property must be offered in distress sales, and after one to five years of delay. Tax delinquency in such a situation is wide-spread, so many properties must be sold at about the same time. The imminence of further bond defaults, with their possible consequence of further disproportionate tax levies, must discourage purchasers still further. The taxing agency must often buy in the property itself at the tax sales, with the result that the property goes off the tax rolls entirely. In result, the creditor finds his position not materially bettered as a result of his mandamus action. It serves to protect cred-

House Hearings, 75th Cong., supra, p. 23; Securities and Exchange Commission, Report, supra, Part IV, p. 12.

The authorities are collected in Fordham, Methods of Enforcing Obligations of Public Corporations, 33 Col. Law. Rev. 28.

itors against willful defaults, but is next to worthless in the case of the taxing agency which is incapable of meeting its obligations."

The only escape from the impasse is for the taxing agency and its creditors to come to an agreement which reduces the indebtedness to an amount which can be paid.15 This procedure will ordinarily result in a substantially greater return to the creditors, and will avoid the expenses and delays of compulsory tax collection, and the dispossession of property owners. Generally speaking, it is entirely feasible to come to an agreement which is mutually satisfactory both to the taxing agency and to the great majority of its creditors. But in almost every case a small minority of the creditors will block the plan. In many cases the minority creditor seeks to establish a nuisance value for his consent; by refusing to agree to the plan, and by threatening mandamus action, he may, with sufficient obduracy, be able to secure payment of his claim in full. other cases, the minority creditors may have some bona fide objection to the plan which is not shared by his fellow creditors. In either case, the desire

House Hearings, 75th Cong., supra, pp. 20-21; Senate Hearings, 73d Cong., supra, pp. 22-23; Securities and Exchange Commission Report, supra, pp. 19-24.

There is precedent for an equity proceeding on a creditor's bill, in which the annual revenues are apportioned among the creditors. See infra, pp. 39-40, and George v. City of Asheville, 80 F. (2d) 50 (C. C. A. 4th); Norfolk & W. Ry. v. Board, 14 F. Supp. 475 (N. D., Ill.). This

of the taxing agency and the great bulk of its creditors to contrive a solution for an intolerable situation has effectually been frustrated.16

The obvious need is for legislative authority to compel the minority bondholders to accept a reasonable adjustment of the indebtedness of the taxing agency. This was the chief effect of Chapter IX during its two years of operation. Only about 108 petitions were filed under the Act; of these only 47 were approved and only 5 proceeded to final decree. Yet many times this number of taxing agencies were able to arrange their affairs merely because of the existence of the legislation. The minority creditors, realizing that they would be forced to agree to a reasonable plan worked out be-

proceeding, however, does not scale down the indebtedness and means simply that the litigation must continue indefinitely. See House Hearings, 75th Cong., supra, pp. 85-86. 16 The hearings are filled with protests against the tyranny exercised by minority creditors. For example, a settlement of one Florida town, agreed to by creditors owning 98 per cent of its bonds, was defeated by a mandamus action brought by the remaining creditors. (House Hearings, 75th Cong., supra, p. 21.) An Arkansas drainage district had similarly secured the consent of creditors owning 95 per cent of its bonds but could not proceed without some protection against the minority (id., 85, 115-116). An Alabama town reached an agreement with creditors holding \$950,000 of its bonds; it was upset by a suit brought by a creditor owning the remaining \$2,000 of bonds. Senate Hearings, 73d Cong., supra, pp. 14-15. See also S. E. C. Report, supra, pp. 28-30. House Hearings, 75th Cong., supra, pp. 143-144

tween the taxing agency and its majority creditors, typically did not object.18

In result, many hundreds of taxing agencies were in serious default, and, in many cases, were hopelessly insolvent. Their creditors, in practical terms, were helpless. The community could gain a fresh start, and the creditors could salvage a part of their investment, only if a mutually acceptable agreement could be worked out." In the great majority of cases a small minority of the creditors, either because of cupidity or because of obstinacy, blocked the agreement. The only answer to an intolerable situation was legislative authority to compel the minority creditors to accept a plan regarded as satisfactory by the majority.

2. The states cannot act.—Given this compelling need for legislative action, the next inquiry must

18 House Hearings, 75th Cong., supra, pp. 22, 124; 81 Cong. Rec. 6318. In Florida, for example, 50 to 75 taxing agencies are said to have worked out a plan of debt adjustment while only about half a dozen petitions were actually filed under Chapter IX (Hearings, p. 124).

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<sup>1</sup>º It is significant in this connection that the Act of May 12, 1933, c. 25, 48 Stat. 31, Section 36, as amended, authorizes the Reconstruction Finance Corporation to make loans, not to exceed a total of \$125,000,000 to any agricultural improvement district for the purpose of refinancing its indebtedness. About \$60,000,000 has been authorized to be loaned to about 250 districts; in most cases completion of the refinancing will be impossible without the aid of Chapter X. House Hearings, 75th Cong., supra, pp. 44-45.

be whether, under the Constitution, the state or the nation is the more appropriate government. To this there can be but one answer.

The minority creditors ordinarily can be compelled to accept the plan desired by the majority only through the operation of bankruptcy or insolvency legislation. Though compare Doty v. Love, 295 U. S. 64. The states have power to enact such legislation, so long as it is outside the field of the federal bankruptcy laws. But such bankruptcy legislation cannot, under the contracts clause, constitutionally be applied to contracts entered into before its passage. Sturges v. Crowninshield, 4 Wheat. 122; Baldwin v. Hale, 1 Wall 223, 228; Brown v. Smart, 145 U.S. 454, 457; International Shoe Co. v. Pinkus, 278 U. S. 261, 263-264. Nor can state bankruptcy laws operate extraterritorially to discharge debts due to creditors resident in other states. Ogden v. Saunders, 12 Wheat. 213; Baldwin v. Hale, supra, 231-234; Gilman v. Lockwood, 4 Wall. 409, 410-411; Denny v. Bennett, 128 U. S. 489, 497-498; Brown v. Smart, supra, 457; Stellwagen v. Clum, 245 U. S. 605, 615; International Shoe Co. v. Pinkus, supra, 263-264.

Each of these powers which the Constitution denies to the states is necessary if the insolvency legislation is to be effective to compel minority creditors to accept the terms of a reasonable plan. It is, accordingly, clear that the overburdened taxing agencies and their creditors stand in urgent need of relief through federal legislation.20

## B. The Act of August 16, 1937

This relief Congress has sought to grant in the Act of August 16, 1937 (reprinted in the Appendix, infra). It adds Chapter X to the Bankruptcy Act and provides, in substance, a procedure by which the taxing agency and its majority creditors may agree on a plan and compel its acceptance by the minority.

Section 81 gives to bankruptcy courts original jurisdiction of proceedings for the composition of the indebtedness of taxing agencies which is payable out of taxes or assessments which are liens against property or the income from the sale of water or power. These agencies include such of the following organizations as may constitutionally proceed in bankruptcy: (1) agricultural improvement districts; (2) sanitary and paving districts; (3) road improvement districts; (4) school districts; (5) port improvement districts; and (6) cities, towns, and other municipalities.

The composition procedure is provided in Section 83. Subdivision (a) authorizes a petition to be filed by any taxing agency (defined as the peti-

<sup>&</sup>lt;sup>20</sup> In Pryor v. Goza, 172 Miss. 46 (1935), the court held a state bankruptcy act for the relief of drainage districts invalid because of the contracts clause of the Federal Constitution.

tioner in Section 82) which is insolvent or unable to meet its debts as they mature. A plan of composition, agreed to by not less than 51 per cent of the creditors affected, must be filed with the petition, together with the names and addresses of all known creditors. The judge, if satisfied that the petition complies with Chapter X and is filed in good faith, shall approve it as properly filed; if not satisfied, he shall dismiss it. The plan of composition may modify the rights of creditors generally, or of any class.

Subdivision (b) requires published and mailed notice of the proceedings and directs that a hearing be held. Any creditor may file objections to the plan. On notice by any creditor to the petitioner, the judge may dismiss the proceeding because not conducted with reasonable diligence or because it is unlikely to be accepted by sufficient creditors. At the hearing the judge shall decide the issues presented, and shall dismiss the petition unless its allegations are sustained.

Subdivision (c) authorizes the judge to stay any suits against the petitioner or its officers or inhabitants based on the securities affected by the plan. The judge may enter an interlocutory order making the plan of composition temporarily operative.

Subdivision (d) directs that the plan of composition shall not be confirmed unless it has been accepted in writing by creditors holding at least twothirds of the aggregate amount of all claims subject to modification by the plan.

Subdivision (e) requires that the judge make findings of fact and conclusions of law as to the issues raised at the hearing. He shall enter an interlocutory decree confirming the plan if satisfied (1) that it is fair, equitable, and for the best interests of the creditors. (2) that it complies with the provisions of Chapter X. (3) that it has been accepted by two-thirds of the creditors, (4) that all amounts to be paid as expenses incident to the composition have been disclosed and are reasonable. (5) that the offer and acceptance of the plan are in good faith, and (6) that the petitioner is authorized by law to carry out the plan. The plan may be modified prior to its confirmation, after hearing, and subject to the withdrawal of any creditor adversely affected. Either party may appeal from the interlocutory decree.

Subdivision (f) provides that after deposit of the money or securities, the court shall enter a final decree, binding all creditors and discharging the petitioner from all debts dealt with in the plan except as therein provided.

Section 84 provides that no court shall exercise the jurisdiction conferred by Section 81 after June 30, 1940, except in proceedings initiated prior thereto.

## C. The Act is within the bankruptcy power

It seems unlikely that there will be any challenge to the Act of August 16, 1937, as lying outside the bankruptcy power except that which is based upon the nature of the debtor. The purpose of the Act. the nature of the proceedings and the effect of the decree are substantially equivalent to the familiar provisions for composition of debts and for bankruptcy reorganizations. There can, therefore, be no real question but that the Act, in its basic respects, is well within the limits of the congressional power to legislate "on the subject of bankruptcies." Continental Bank v. Rock Island Ry., 294 U. S. 648, 667-675. That case also answers any objection based upon the fact that the proceedings do not look to the liquidation of the debtor's assets. There is, similarly, no ground for any objection that the surrender of property to the court is necessary for the exercise of bankruptcy jurisdiction. Vulcan Sheet Metal Co. v. North Platte Val. Irr. Co., 220 Fed, 106, 108 (C. C. A. 8th); In re Hirsch, 97 Fed. 571, 573 (S. D., N. Y.); In re J. M. Ceballos & Co., 161 Fed. 445, 450 (D., N. J.). The only remaining question is whether the bankruptcy power extends to a public corporation, such as the Lindsay-Strathmore Irrigation District, as well as to private persons. As to this there is, we submit, equally little doubt.

1. The bankruptcy clause was introduced toward the close of the Constitutional Convention 21 and occasioned no comment or explanation beyond that of Gouverneur Morris, to the effect that "this was an extensive and delicate subject." 22 . The Federalist is equally terse, saying merely that the power is so intimately connected with the regulation of commerce "that the expediency of it seems not likely to be drawn in question." (No. 42, Madison.) It may, however, be noted that, in ratifying the Constitution, the New York Convention proposed an amendment which would have restricted the bankruptcy clause to merchants and traders.23 The rejection of this proposal indicates, as Morris said, that the bankruptcy power was intended to embrace an "extensive" subject.

Story (Constitution, II, secs. 1106-1114), emphatically pictures the desirability of giving the

<sup>&</sup>lt;sup>21</sup> On August 29, 1787, Pinckney proposed that Congress be given the power "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange." Farrand, Records of the Federal Convention, II, 447.

<sup>&</sup>lt;sup>22</sup> This was in reply to Sherman, who did not desire to give Congress a power to punish bankrupts by death, as was in some cases done by the laws of England. There was no further debate, and the clause was adopted by a vote of 9-1. Farrand, II, 489.

<sup>&</sup>lt;sup>23</sup> "That the power of Congress to pass uniform laws concerning bankruptcy shall only extend to merchants and other traders; and the states, respectively, may pass laws for the relief of other insolvent debtors." Elliot's Debates, I, 330.

bankruptcy power to the Federal government. "A national government which did not possess this power would be little worthy of the exalted functions of guarding the happiness and supporting the rights of a free people" (sec. 1106). He does not, of course, discuss the applicability of the bankruptcy power to public debtors. But there seems to be little question that he would view an act for their relief as well within the bankruptcy field. After noting that the English laws were confined to traders, he continues (sec. 1113):

But this is a mere matter of policy, and by no means enters into the nature of such laws. There is nothing in the nature or reason of such laws to prevent their being applied to any other class of unfortunate and meritorious debtors.

2. The constitutional development of the bank-ruptcy clause shows with considerable clarity that it extends to any debtor who cannot meet his obligations. There have been Federal bankruptcy statutes in force during 1800–1803, 1841–1843, 1867–1878, and since 1898. Each period marks an expansion of the concept of bankruptcy.

Although the English Act was confined to traders (Continental Bank v. Rock Island Ry., 294 U. S. 648, 670), the Act of April 4, 1800, c. 19, 2 Stat. 19, applied to "any merchant, or other person actually using the trade of merchandise, by

<sup>&</sup>lt;sup>24</sup> The background of this development is well summarized in Warren, Bankruptcy in United States History.

dealing in exchange, or as a banker, broker, factor, underwriter or marine insurer." The Act of August 19, 1841, c. 9, 5 Stat, 440, not only introduced the novel principle of voluntary bankruptcy, but extended it to "all persons whatsoever owing debts which shall not have been created of a defalcation" in a public or a fiduciary position. The Act of March 2, 1867, c. 176, 14 Stat. 517, permitted a voluntary petition to be filed by "any person" who was a resident, who had provable debts over three hundred dollars, and who would take an oath of allegiance to the United States (Sec. 11). The Act was also applicable to partnerships and to "all moneyed business or commercial corporations and joint stock companies"; the petitions could be. voluntary or involuntary, but, since the business concerns could secure no discharge, the proceedingwas solely for the purpose of liquidation (secs. 36, 37). The Act of June 22, 1874, c. 390, 18 Stat. 178, amending the 1867 Act, for the first time permitted the debtor to propose a plan of composition with his creditors, either before or after an adjudication of bankruptcy, which would be effective when those holding two-thirds of the claims accepted it (sec. 17). The Act of July 1, 1898, c. 541, 30 Stat. 544, permitted any natural person to file a voluntary petition of bankruptcy and authorized involuntary proceedings against natural persons who were not wage-earners or farmers, against unincorporated companies, partnerships and private bankers, and

against corporations "engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits" (secs. 4, 5).

Recent amendments to the Bankruptcy Act have permitted reorganization or readjustment proceedings, in contrast to the traditional liquidation proceedings, "for the relief of debtors." The Act of March 3, 1933, c. 204, 47 Stat. 1467, permits a natural person to file a petition for a composition or for an extension of time to pay his debts (sec. 74). Special provisions are made for farmers (sec. 75). A new class of debtors is brought in by Section 77, under which railroad corporations may file a petition for reorganization. The Act of June 7, 1934, c. 424, 48 Stat. 911, adds Section 77B, which permits any corporation covered by Section 4 of the 1898 Act, and any transportation corporation not covered by Section 77, to file a petition for reorganization.

This steadily expanding field of legislation under the bankruptcy clause has been well summarized by this Court in *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 668, 671:

> From the begining, the tendency of legislation and of judicial interpretation has been uniformly in the direction of progressive liberalization in respect of the operation of the bankruptcy power.

> The fundamental and radically progressive nature of these extensions becomes ap-

parent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they be, have not gone beyond the limit of congressional power; but rather have constituted extensions into a field whose boundaries may not yet be fully revealed.

See, also, Louisville Bank v. Radford, 295 U. S. 555, 587-588; Adair v. Bank of America Association, No. 365, October Term, 1937 (pamph., p. 3). It is plain that the bankruptcy power has, with the approval of this Court, been exercised with respect to "practically all insolvent debtors" (Louisville Bank v. Radford, supra, 588), and to "practically all classes of persons and corporations" (Continental Bank v. Rock Island Ry., supra, 670). Respondent must, we submit, show compelling reasons why this ever-widening exercise of the bankruptcy power must come to an abrupt halt when Congress extends the benefits of the bankruptcy law to a new class of debtors, the taxing agencies specified in the Act of August 16, 1937.

3. Certainly there is nothing in the concept of bankruptcy, as it has been formulated by this Court, which would require the exclusion of these public debtors such as the Lindsay-Strathmore Irrigation District. In Hanover National Bank v. Moyses, 186 U.S. 181, the Court sustained the Act of July 1, 1898, against a constitutional attack which included the objection that it extended to others than traders. Chief Justice Fuller referred to the dictum of Justice Livingston, in Adams v. Storey, 1 Paine, 79, "that it may well be doubted" whether a bankruptcy act extending "to every description of persons within the United States would comport with the spirit" of the bankruptcy powers, and replied, "But this doubt has been resolved otherwise" (p. 184). The Court, instead, approved Story's statement (supra, p. 27) that "there is nothing in the nature or reason of such laws to prevent their being applied to any other class of unfortunate and meritorious debtors" (p. 185).

The other definitions of the bankruptcy power which have been formulated or approved by this Court are equally broad. Chief Justice Marshall, in Sturges v. Crowninshield, 4 Wheat. 122, 195, forecast the development of the succeeding century when he said that "it is not easy to say who must be excluded from, or may be included within, this description. It is, like every other part of the subject, one upon which the legislature may exercise an extensive discretion." Justice Catron, sitting in In re Klein (C. C. Mo., reported in a note to Nelson v. Carland, 1 How. 265, 277), formulated a

broad principle which has twice been quoted and approved by this Court.<sup>20</sup> He said (p. 281):

[The subject of bankruptcies] extends to all cases where the law causes to be distributed, the property of the debtor among his creditors: this is its least limit. Its greatest, is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of congress.

With the policy of a law, letting in all classes, others as well as traders; and permitting the bankrupt to come in voluntarily, and be discharged without the consent of his creditors, the courts have no concern; it belongs to the law-makers.

Judge Cowen, in Kunzler v. Kohaus, 5 Hill. 317, 321, in a broad definition which has been approved and quoted by this Court <sup>26</sup> said that the bankruptcy power authorized Congress "to establish uniform laws on the subject of any person's general inability to pay his debts \* \* \*." Judge Blatchford, in In re Reiman, Fed. Cas. No. 11673, in another statement which has been approved and quoted by this Court, <sup>27</sup> said (p. 496) that the subject of bank.

<sup>&</sup>lt;sup>25</sup> Hanover National Bank v. Moyses, 186 U. S. 181, 186; Louisville Bank v. Radford, 295 U. S. 555, 588.

<sup>&</sup>lt;sup>26</sup> Continental Bank v. Rock Island Ry., 294 U. S. 648, 670; Hanover National Bank v. Moyses, 186 U. S. 181, 187.

<sup>&</sup>lt;sup>21</sup> Continental Bank v. Rock Island Ry., 294 U. S. 648, 672-673; Louisville Bank v. Radford, 295 U. S. 555, 588; Hanover National Bank v. Moyses, 186 U. S. 181, 187.

ruptcy cannot properly be defined as "anything less than the subject of the relations of an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief." See, also, United States v. Pusey, Fed. Cas. No. 16098.

This Court has, on these occasions, pointed out the broad scope of the bankruptcy powers. No definition of those powers and no decision of this Court has ever indicated that the nature of bankruptcy did not extend to debtors of every class. The only requirement has been that there be a debtor and that he be unable to meet his obligations. Whether the debtor be private or public, an individual or an organization, is wholly immaterial. So long as the debtor be unable to pay his debts, both he and his creditors may be made the subject of the power of Congress to provide relief.

4. Respondents must, therefore, rest their claim solely on the proposition that something in the nature of the public debtors specified in Section 81 carves them out of the field of the bankruptcy power. The Government submits that any such contention ignores both the reason for the bankruptcy power and the nature of the taxing agencies enumerated in Section 81.

In limine, the question whether or not the bankruptcy power extends to the indebtedness of the States themselves may be put to one side. Apart from the effect of the Eleventh Amendment upon involuntary proceedings, there is reason to believe

that, if only the State have an indebtedness which it cannot pay, the sovereign aspects of the state government are irrelevant to the bankruptey power. Congress has been granted a "plenary power over " the whole subject of bankruptcies." Hanover National Bank v. Moyses, 186 U.S. 181, 187. This power "is-unrestricted and paramount," such that even nonconflicting state regulation of the subject is inoperative. International Shoe Co. v. Pinkus, 278 U.S. 261, 265. The tax lien of a state "must yield to the requirements of bankruptcy administration." Van Huffel v. Harkelrode, 284 U. S. 225, 228. This Court has barred a tardy claim for state taxes because "The federal government possesses supreme power in respect of bankruptcies. If a state desires to participate in the assets of a bankrupt, she must submit to appropriate requirements by the controlling power." New York v. Irving Trust Co., 288 U. S. 329, 333. The bankruptcy power thus is akin to the commerce power, which overrides contracts which the states may have made, New York v. United States, 257 U.S. 591; United States v. Village of Hubbard, 266 U. S. 474, and may be applied in direct regulation of the states themselves, United . States v. California, 297 U.S. 175; Board of Trustees v. United States, 289 U.S. 48. But it is unnecessary to consider this question. The Act of August 16, 1937, does not confer jurisdiction over the indebtedness of a state; indeed, even counties and parishes are excluded from its operation. It is

a familiar and basic principle of constitutional law that the Court will not decide constitutional questions unnecessarily. Liverpool, New York & Philadelphia S. S. Co. v. Commissioners, 113 U. S. 33, 39; Cincinnati v. Vester, 281 U. S. 439, 448-449; Anniston Mfg. Co. v. Davis, 301 U. S. 337, 355. Much less will it pass upon the validity of an act which has not been enacted and which none has even suggested should be enacted.

For the same reasons, this is not an appropriate case in which to consider the validity of the Act of August 16, 1937, as applied to the sixth classification of Section 81: "any city, town, village, borough, township, or other municipality." This classification is immediately followed by the following proviso:

That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

It is plain beyond argument that, even if the Act should be thought to go beyond the bankruptcy power in Section 81 (6), the application of the Act to the Lindsay-Strathmore Irrigation District would be wholly separable from any application of the Act to municipalities, and therefore would be

entirely unaffected by any decision of invalidity with respect to the sixth subdivision of Section 81. This Court, accordingly, will not in this case consider the validity of extending the bankruptcy power to municipalities. See Kay v. United States, No. 61, October Term, 1937. The narrow question for decision is whether the federal bankruptcy power extends to irrigation districts such as the District before this Court.

In the first place, it is to be observed that the reasons for a bankruptcy law, and thus for the powers given to Congress, are peculiarly applicable to public debtors of this nature. They are organized for the sole purpose of erecting and operating costly projects to improve agricultural lands. The projects may often include unproductive land, incapable of bearing its share of the cost.<sup>28</sup> The revenues of the district are derived chiefly from taxes or assessments against the lands. The taxpayers, when faced by a sudden decline in the value of their agricultural products, or when their lands are ravished by drought or flood, cannot pay the taxes.<sup>29</sup> If delinquency occurs, the assessments on the paying lands must be increased and even more tax-

<sup>&</sup>lt;sup>28</sup> Irrigation District Operation and Finance, Bulletin 1177, U. S. Department of Agriculture (1923), pp. 6-7.

<sup>&</sup>lt;sup>20</sup> Loans for the Relief of Drainage and Irrigation Districts, House Rep. No. 37, 72d Cong., 1st Sess., pp. 3-4. Economic Survey of Certain Irrigation Projects, Hearings before House Committee on Irrigation and Reclamation, March 6, 1930, 71st Cong., 2d Sess., passin.

payers, unable to meet the higher rates, will stop paying altogether. As we have shown, when default occurs, the creditors are generally without a practicable remedy: there can be no execution against the property of the district and mandamus actions to compel the collection of additional taxes are futile. The only practicable solution is to reduce the indebtedness to an amount which the district can pay. Unless there be legislation compelling agreement by minority creditors, no voluntary contract can accomplish this end. For this the Federal bankruptcy power is necessary (Supra, pp. 14–22.)

Thus not only is there present the basic reason for any bankruptcy law—the debtor's inability to pay his debts—but there is an additional factor not ordinarily present: the creditors' incapacity effectively to realize whatever proportion of the indebtedness the debtor can in fact pay. These factors are intensified by reason of the relatively large indebtedness and uncertain income which are typically found in agricultural improvement districts.

There is, then, nothing in the actual operation of agricultural improvement districts which suggests that the bankruptcy power of the United States might not reach to their debts. The only remaining ground for exempting these districts relates to their status as corporations to which certain of the governmental powers of the State have been given.

The Lindsay-Strathmore Irrigation District is organized under the California law of March 31, 1897, as amended (Deering's General Laws, Art. No. 3854). It is clear that it is organized for a "public purpose" (Houck v. Little River District, 239 U.S. 254, 261) and that it possesses certain governmental powers and characteristics, notably the power to impose special assessments and the election of its officers by the residents generally.80 For these reasons, the California courts describe it as a "public corporation" or a "public agency." On the other hand, it is equally plain that the District in no sense shares the sovereignty of the state, and that its governmental powers are limited solely to the purpose of agricultural irrigation for which it was organized. The California courts, accordingly, have repeatedly refused to give these districts the status of a "political subdivision" of the These matters are more fully treated in a subsequent part of this brief (infra, pp. 83-85).

Here, it is immaterial whether the District be said to have more of the characteristics of government or of a private corporation.<sup>31</sup> For it seems

<sup>&</sup>lt;sup>30</sup> Similarly, private public utilities serve an equally public purpose and one possessed of comparable governmental powers, such as eminent domain.

<sup>&</sup>lt;sup>31</sup> The commentators, it may be noted, draw a clear distinction between the municipal corporation, with general governmental powers, and the improvement district, with its narrowly limited power. See McQuillan, Municipal Corporations, I, Sec. 135; Dillon, Municipal Corporations, I, secs. 37, 38; and cases there collected.

well established that the federal courts have full power to adjudicate and control the relations between districts of this nature and their creditors.

It has long been settled that all of the subordinate organizations of the states, even though full "political subdivisions," are subject to suit in the federal courts, notwithstanding the terms of the Eleventh Amendment and notwithstanding state statutes restricting suit against them to the state courts. Lincoln County v. Luning, 133 U. S. 529. Not only may the creditors bring suit on their bonds, but this Court has repeatedly held that the federal courts might issue a writ of mandamus to compel the officials of the political subdivision or district to collect taxes sufficient to pay the debt due to the plaintiff. Board of Commissioners v. Aspinwall, 24 How. 376; Supervisors v. United States, 4 Wall. 435; Von Hoffman v. City of Quincy, 4 Wall. 535; City of Galena v. Amy, 5 Wall. 705; Walkley v. City of Muscatine, 6 Wall. 481.

In the absence of statute authorizing analogous proceedings in the state courts, mandamus rather than an equity receivership is the appropriate course. Rees v. City of Watertown, 19 Wall. 107; Meriwether v. Garrett, 102 U. S. 472; Thompson v. Allen County, 115 U. S. 550; Yost v. Dallas County, 236 U. S. 50. But it is also settled that the federal court may itself collect the taxes necessary to pay the plaintiff creditors if there be an analogous procedure available to creditors in the state courts.

In Supervisors v. Rogers, 7 Wall. 175, the Court affirmed an order appointing the marshal of the court a commission to levy taxes sufficient to satisfy the judgment against the county; authority was found (p. 180) in the state mandamus statute, authorizing the state courts to appoint persons to discharge any duties which an officer refused to perform in obedience to a writ of mandamus. In Guardian Savings Co. v. Road District, 267 U.S. 1, the court affirmed a decree of the district court which appointed a receiver to collect taxes necessary to pay principal and interest on the outstanding bonds because a similar power was given the state chancery court; the cause of the default, it may be noted, was a decree of the state court enjoining the District from paying the money (267 U. S. at 5). See, also, Mercantile Trust Co. v. Road District, sustaining the claim of a mortgage trustee for compensation out of the proceeds of a similar collection of taxes by "foreclosure" in the federal court of the mortgaged assessments. The lower courts have similarly, in equity suits, directed their receivers or officers to collect taxes necessary to pay creditors of the political subdivision or district. 82

<sup>&</sup>lt;sup>32</sup> Stansell v. Levee District No. 1, 13 Fed. 846, 852 (N. D., Miss.) and Campbellsville Lumber Co. v. Hubbert, 112 Fed. 718, 721 (C. C. A. 6th), each approved by this Court in Guardian Savings Co. v. Road District, supra; Kotchtitsky v. Mercantile Trust Co., 16 F. (2d) 227 (C. C. A. 8th); Duval Cattle Co. v. Hemphill, 41 F. (2d) 433, 438 (C. C. A. 5th); Krietmeyer v. Baldwin Drainage District, 298 Fed.

It is clear that the federal courts have entertained little hesitation in subjecting both political subdivisions and taxing districts to federal judicial process on behalf of the plaintiff creditor. Wholly apart from any federal statute, involuntary suits may be brought against the taxing agency, while Chapter X authorizes only voluntary proceedings. Mandamus will issue to compel the debtor to collect taxes, while Chapter X denies any control over the petitioning taxing agency. Indeed, the federal courts have themselves collected the taxes, while Chapter X allows it to do no more than confirm an agreement reached between the taxing agency and two-thirds or more of its creditors.

It necessarily follows that there is nothing in the nature of the taxing agencies specified in Section 81 which excludes their debts from the reach of the federal judicial power. And if they are subject to the general judicial power granted in "controversies \* \* \* between citizens of different states," these debts are obviously subject to the judicial power when authorized by Congress under the specific power to legislate on "the subject of bankruptcies."

5. The meager *indicia* that have been found as to the intention of the framers, the expanding history of the powers exercised by Congress under the

<sup>604 (</sup>S. D., Fla.); see Drainage District No. 2 v. Mercantile-Commerce Bank, 69 F. (2d) 138, 140 (C. C. A. 8th); cf. George v. City of Asheville, 80 F. (2d) 50 (C. C. A. 4th).

bankruptcy clause, the definitions which this Court has approved of "the subject of bankruptcies," and the jurisdiction which the federal courts have long exercised with regard to the indebtedness of state taxing agencies, alike serve to demonstrate that the Act of August 16, 1937, falls well within the bankruptcy powers granted to Congress by the Constitution.

This conclusion is confirmed by the two opinions in which this Court has had occasion to consider bankruptcy acts for the relief of public debtors. In Ashton v. Cameron County District, 298 U. S. 513, this Court held invalid the Act of May 24, 1934, adding Chapter IX to the Bankruptcy Act. The decision, however, was placed on the ground that Chapter IX was inconsistent with the sovereign rights of the states. The Court said (p. 527):

\* \* \* we assume for this discussion that the enactment is adequately related to the general "subject of bankruptcies." See Hanover National Bank v. Moyses, 186 U. S. 181; Continental Illinois N. B. & I. Co. v. C., R. I. & P. Ry. Co., 294 U. S. 648; Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555.

Again, in Adair v. Bank of America Association, No. 365, October Term, 1937, the Court cited the Act of August 16, 1937, as illustrative of the "progressive liberalization of bankruptcy and insolvency laws" (pamph., p. 3). Neither of these cases, of course, is a decision on the question, but each is significant as indicative of the ordinarily accepted connotations of "the subject of bankruptcies." Proceedings for the relief of the public debtors specified in Section 81 cannot, we submit, be held to be outside the federal bankruptcy powers unless the constitutional grant of power is to be sharply curtailed, in striking contrast to the broad and expanding development the bankruptcy clause has received both from Congress and from this Court.

## D. The Act violates no limitation of the bankruptcy power

Appellees, in their return to the order to show cause why an injunction should not issue (R. 29–30) and in their motion to dismiss the proceeding (R. 22–23) also object that the Act of August 16, 1937, is not a "uniform" law on the subject of bankruptcy; and that it violates the Fifth Amendment in that it takes property without just compensation. Neither objection has substance.

1. The Act is "uniform."—The Act of August 16, 1937, contains no geographical or sectional discrimination or classification. The manner in which it operates differently in one place than in another is as a result of different state laws. For example, the taxing agencies of one state might be authorized to proceed under Chapter X while those of another state might not. Again, the details of the plans adopted may vary from state to state accord-

ing as the taxing agencies have authority to take steps of one kind or another in execution of the plan of composition.

It is quite plain that any such variation does not destroy the uniform operation of the federal law. The Act of July 1, 1898, contained several analogous variations: for example, the exemptions allowed the bankrupt, dower rights, and priority of payments, each turned upon the local law of the bankrupt's state. This Court in Hanover National Bank v. Moyses, 186 U. S. 181, held that these provisions did not infringe the requirement that bankruptcy laws be uniform. It said (pp. 188, 190):

The laws passed on the subject must, however, be uniform throughout the United States, but that uniformity is geographical and not personal, \* \* \*.

We \* \* \* hold that the system is, in the constitutional sense, uniform throughout the United States, when the trustee takes in each State whatever would have been available to the creditors if the bankrupt law had not been passed. The general operation of the law is uniform, although it may result in certain particulars differently in different States.

That ruling is controlling here: the federal law is uniform even though its application will in some respects vary according to local law, just as it varies from case to case according, inter alia, to the amount of the debts and resources of the debtor.

2. The Act does not violate the Fifth Amendment.—Appellees object that their property is taken without just compensation by the Act of August 16, 1937. The provisions of the actual plan proposed by the District and its majority creditors are, of course, not before the Court on this appeal. Appellees' objection, therefore, seems to relate only to the broad purpose of the Act to compel minority creditors to accept a plan of readjustment which involves a reduction in the amount of their claims against the debtor taxing agency.

But this object is the very purpose and the heart of the bankruptcy power. If the creditor's claim could not so be "taken" in the proceeding, the bankruptcy power would be a complete nullity and every discharge or confirmation, under any part of the Bankruptcy Act, would violate constitutional rights.

3. There is no violation of the contracts clause.— Appellees seem not to object that proceedings under this act result in an impairment of their contracts. However, it was suggested by the Court in Ashton v. Cameron County District, 298 U. S. 513, 531, that; so far as the State granted permission to its taxing agencies to proceed in bankruptcy, it impaired the obligation of contracts. This objection, of course, can relate only to proceedings in the states where express authorization was necessary

for the public debtor to petition the bankruptcy court; the failure of a state to restrict the powers of the taxing agency hardly could be said to be an impairment of the obligation of contracts.

The Government submits that this suggestion is unfounded. The State consent does not impair the obligation of any contract. The impairment is accomplished in the bankruptcy court, and is the guiding purpose of the bankruptcy proceedings. Whether or not the consent is necessary for the taxing agency to proceed, the contract rights of the creditors are readjusted only in bankruptcy and not by the action of the state. The consent of the state is irrelevant to the rights of the creditors; it serves only to waive any objection which the state might have to the bankruptcy proceedings.

In Hanover National Bank v. Moyses, 186 U. S. 181, 188-190, the Court sustained the power of Congress to grant to the bankrupts the exemptions given by state law. None has had the temerity to argue that, in prescribing the amount of property which the creditors could not reach, the state impaired the obligation of contracts, even though it is plain that the creditor's realization in the bankruptcy court was in part dependent upon the bankrupt's exemptions.

<sup>&</sup>lt;sup>33</sup>The tariff imposed upon the importation of scientific instruments, considered in *Board of Trustees* v. *United States*, 289 U. S. 48, was imposed only because the State of Illinois authorized their purchase and importation; this did not make the tariff charge a forbidden import duty laid by the State.

THE ACT OF AUGUST 16, 1937, DOES NOT INVADE THE RESERVED POWERS OF THE STATES

It has been shown that the Act of August 16, 1937, is an exercise of the bankruptcy powers of the Federal Government and that, apart from any effect of the Tenth Amendment, it violates no constitutional limitation. The only remaining question is whether it is to be declared invalid because, under the Tenth Amendment, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The original act for the relief of State taxing districts (May 24, 1934, c. 345, 48 Stat. 798; U. S. C., Title 11, c. IX) was held invalid on this or an analagous ground in Ashton v. Cameron County 'District, 298 U. S. 513. The Government submits: (a) the Tenth Amendment has no application to powers which are delegated to the Federal Government; (b) the Act of August 16, 1937, infringes sovereign powers of the States; and (c) the Ashton case is inapplicable here or, alternatively, should be overruled.

A. The Tenth Amendment does not restrict the powers granted to the Federal Government

If, as we have shown, the bankruptcy powers granted to Congress by Article I, Section 8, clause 4 include the power to provide for composition of the debts of state taxing agencies, no further question can be raised under the Tenth Amendment.

That Amendment has no independent operation. It reserves to the states only "the powers not delegated to the United States by the Constitution." Language could not be clearer.

The plain meaning of this Amendment is bulwarked both by the circumstances of its adoption and the decisions of this Court.

1. The first ten amendments are a close adaptation of those proposed by Massachusetts in ratifying the Constitution.34 At that time four States had ratified the new Constitution; the opposition was strong and becoming increasingly vocal in the states yet to act. The omission of a bill of rights was generally regarded as the most vulnerable point in the proposed charter.35 John Hancock, president of the Massachusetts Convention, accordingly introduced the proposed amendments "in order to remove the doubts and quiet the apprehensions of gentlemen" (Elliot's Debates, II, 123). John Adams welcomed the proposal with enthusiasm; it would allay doubts, conciliate opposition and serve to ease the path of ratification in the eight states which had not acted. Stillman considered them "peace-makers" (Elliot, II, 123-124, 169). These predictions were fulfilled. South Carolina,

<sup>&</sup>lt;sup>24</sup> The first of the nine recommendations of Massachusetts read: "That it be explicitly declared that all powers not expressly delegated by the aforesaid Constitution are reserved to the several states, to be by them exercised" (Elliot's Debates, I, 322).

<sup>25</sup> Warren, The Making of the Constitution, p. 769.

New Hampshire, Virginia and New York each ratified the Constitution but expressed their earnest hope for amendments; only the North Carolina convention insisted upon amendments prior to ratification.\*\*

The discussion in the ratifying conventions confirms the plain meaning of the words of the Tenth Amendment, and indicates that the proponents wished merely to insure that the central government would be one of delegated powers. In Massachusetts Adams stated that the proposed amendment "removes a doubt which many have entertained" and made sure that "if any law made by the federal government shall be extended beyond the power granted by the proposed Constitution," it would be held unconstitutional (Elliot's Debates, II, 131). Jarvis agreed as to the desirability of the proposal, to "remove every doubt on this head" (id., II, 153). In Virginia, Grayson thought, since there was a similar clause in the Articles of Confederation, it could not be "totally unneces-

in Massachusetts and New Hampshire was the Tenth Amendment offered as an amendment (Elliot, I, 322, 326); in South Carolina, Virginia, and New York it was set forth as declaratory of the conventions' understanding of the construction of the Constitution (id., I, 325, 327). Maryland ratified without attaching proposed amendments, but its convention addressed a statement to the people of that State, explaining that the Constitution was "very defective", and recommending various amendments, including one similar to the Tenth Amendment (id. II, 547, 550).

sary" (id., III, 449). Mason agreed, since the amendment would "remove our apprehensions" (id., III, 442). Bloodworth, in North Carolina, urged the amendment because "every possible precaution should be taken when we grant powers" (id., IV, 167). The delegates who opposed the amendment did so largely on the ground that it was unnecessary, if not dangerous.<sup>37</sup>

The anxiety for this declaratory rule of construction may be traced to two fears: that the national government might assert the right to exercise powers not granted, and that the states would be unable fully to exercise the powers which the Constitution had not taken from them. The first fear may be exemplified by Bloodworth of North Carolina, who warned that "without the most express restrictions, Congress may trample on your rights" (Elliot, IV, 167). So, too, Patrick Henry inveighed against the surrender of powers to the national government "without check; limitation, or control" (id., III, 446). But perhaps the most frequently expressed purpose was to insure that the states should continue able to exercise the numerous powers which had not been granted to Congress. Grayson of Virginia "thought it questionable whether rights not given up were reserved"

Nicholas, Randolph and Madison, (id., III, 450, 464, 600, 620, 626); North Carolina: Maclaine and Iredell (id., IV, 140, 149); South Carolina: Pinckney (id., IV, 315-316); Pennsylvania: Wilson and M'Kean (id., II, 435-436, 540).

(id., III, 449). Henry of Virginia thought ratification of the unamended constitution "the most absurd thing to mankind that ever the world saw—a government that has abandoned all its powers" (id., III, 446). Mason of Virginia asked, "Is there any thing in this Constitution which secures to the states the powers which are said to be retained?" (id., III, 441)."

When the proposed amendments were introduced by Madison in the first Congress, "to give satisfaction to the doubting part of our fellow-citizens" (1 Annals of Congress 432), he viewed the Tenth Amendment as merely declaratory (1 Annals 441):

I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the Constitution, that the powers not therein delegated should be reserved to the several States. Perhaps other words may define this more precisely than the whole of the instrument now does. I admit they may be deemed unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

<sup>&</sup>lt;sup>28</sup> For the possible convenience of the Court, citations to additional discussion of the proposals which became the Tenth Amendment are: Elliot's Debates, II, 153, 540; III, 464, 588, 589, 622.

There was no other explanatory statement in the briefly recorded debate on this Amendment. But Madison in the course of debate on Hamilton's bank proposal, on February 2, 1791, when nine states had ratified the amendments which he had proposed, said (2 Annals 1897):

Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might evercise it, although it should interfere with the laws, or even the Constitution of the States.

Finally, any possibility of doubt must be removed when it is remembered that the adoption of the Tenth Amendment was accompanied by a deliberate refusal to reserve to the states all powers not "expressly" granted to the national government. This was the wording of Article II of the Articles of Confederation," of the Massachusetts and New Hampshire proposals, of the South Carolina declaration, and of the Maryland conven-

<sup>\* &</sup>quot;Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States \* \*."

<sup>4</sup>º See footnote 34, supra.

<sup>&</sup>lt;sup>41</sup> "That it be explicitly declared that all powers not expressly and particularly delegated by the aforesaid Constitution are reserved to the several states, to be by them exercised" (Elliot, I, 326).

<sup>&</sup>lt;sup>42</sup> "This Convention doth also declare, that no section or paragraph of the said Constitution warrants a construc-

tion's statement to its electors." New York referred to powers "clearly" delegated." Only Virginia, in its declaration, made no such qualification.45 While Madison's proposals for new amendments were under consideration in Congress, Tucker and Gerry each moved to amend this proposal so as to reserve to the states the powers not expressly delegated; each motion was defeated (1 Annals of Congress 761, 767-768). Even the original reservation in the Articles of Confederation of powers not "expressly" delegated, it is to be noted, was intended by the Continental Congress to do more than to preserve the autonomy of the states.\*\* Whether or not a reservation to the states of powers not expressly delegated would have impaired the last clause of Section 8 of Article I,

tion that the states do not retain every power not expressly relinquished by them, and vested in the general government of the Union" (id., I, 325).

<sup>&</sup>quot;That Congress shall exercise no power but what is expressly delegated by this Constitution" (id., II, 550).

which is not by the said Constitution clearly delegated to the Congress. \* \* remains to the people \* or to their respective state governments \* \* " (id., I, 327).

mains with them [the people] \* \* \*" (id., I, 327).

<sup>&</sup>lt;sup>46</sup> Thomas Burke, writing to Governor Caswell from the Congress, on May 23, 1777, said the proposal originally "expressed only a reservation of the power of regulating the internal police, and consequently resigned every other power. It appeared to me that this was not what the States expected, and, I thought, it left it in the power of the

granting "necessary and proper" powers, it is plain that there was a deliberate choice of the Congress to except from the reservation to the states the powers granted to Congress by implication. This choice cannot be squared with any argument that appropriate federal powers cannot be exercised because of the operation of the Tenth Amendment.

In summary, the men who proposed the Tenth Amendment seem to have been clear that the Amendment was simply declaratory of the evident proposition that Congress could not constitutionally exercise powers not granted to it, and that these powers could continue to be exercised by the states. It was designed solely to allay extravagant fears such as those of Spencer of North Carolina who felt that a clause as innocuous as that relating to the election of senators and representatives "strikes at the very existence of the states, and supersedes the necessity of having them at all" (Elliot's Debates, IV, 55). As Story has emphatically said (Story on the Constitution, secs. 1907–1908):

This amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the Constitution.

future Congress \* \* \* to make their own power as unlimited as they please." Burke accordingly proposed the Article which, after two days of spirited debate, was adopted 11-1, with one state divided. 7 Journals of Cont. Cong. 122-123.

It is plain, therefore, that it could not have . been the intention of the framers of this amendment to give it effect as an abridgement of any of the powers granted under the Constitution, whether they are express or implied, direct or incidental. Its sole design is to exclude any interpretation by which other powers should be assumed beyond those which are granted. The attempts then which have been made from time to time to force upon this language an abridging or restrictive influence are utterly unfounded in any just rules of interpreting the words or the sense of the instrument. Stripped of the ingenious disguises in which they are clothed, they are heither more nor less than attempts to foist into the text the word "expressly," to qualify what is general, and obscure what is clear and defined. \*

2. The plain purpose of the Amendment has been confirmed by more than a century of constitutional history. The decisions by this Court have reiterated that the Tenth Amendment offers no independent limitation upon the powers granted to the United States but merely states the unquestioned principle that the central government is one of enumerated powers.

The effect of the Tenth Amendment seems to have been considered for the first time in Martin v. Hunter's Lessee, 1 Wheat. 304, 325, where the Court said the principle, that "the sovereign powers vested in the state governments " " re-

mained unaltered and unimpaired, except so far as they were granted to the government of the United States", had been "positively recognized" by the Amendment. Even Luther Martin, Attorney-General of Maryland, arguing in McCulloch v. Maryland, 4 Wheat. 316, conceded that the Amendment meant what it said, that it was "merely declaratory of the sense of the people" and designed to allay an apprehension which the federalists "treated as a dream of distempered jealousy" (4 Wheat. at 372, 374). Chief Justice Marshall's opinion agreed that the Amendment "was framed for the purpose of quieting the excessive jealousies which had been excited" and that it left open the question "whether the particular power \* \* has been delegated to the one government, or prohibited to the other": (4 Wheat. at 405, 406). Taney, as well, accepted this self-evident proposition. In Gordon v. United States, 117 U. S. 697, 705 (1864), he said: "The reservation to the States respectively can only mean the reservation of the rights of sovereignty which they had not parted from."

This Court has continued to treat the Tenth Amendment as containing no limitation on the powers granted to the United States. In the Lottery Case, 188 U. S. 321, 357, it brushed aside the suggestion that this Amendment forbade the legislation because "the answer is that the power to regulate commerce among the States has been expressly delegated to Congress." In Northern Se-

curities Co. v. United States, 193 U. S. 197, 344-345, the majority opinion refused to entertain argument based on the Tenth Amendment which the defendants "strangely enough" raised; it could not "conceive how it was possible for any one to seriously contend" that the commerce power was limited by the state power to charter corporations." Court, speaking of the National Prohibition Act, in Everard's Breweries v. Day, 265 U. S. 545, 558, said, "if the act is within the power confided to Congress, the Tenth Amendment, by its very terms, has no application, since it only reserves to the States 'powers not delegated to the United States by the Constitution'." In Missouri v. Holland, 252 U.S. 416, 432, the Court said that, to answer the question as to the validity of the Migratory Bird Treaty and act in view of the rights reserved to the States, "it is not enough to refer to the Tenth Amendbecause \*, \* \* the power to ment make treaties is delegated expressly \* \* \*." Again, in United States v. Sprague, 282 U.S. 716, 733, this Court said: "The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted It added nothing to the instrument as originally ratified

<sup>&</sup>lt;sup>47</sup> Only four justices joined in this opinion; the concurring opinion of Justice Brewer seems not to have gone so far. 198 U. S. at 368.

These cases show a consistent " and express recognition that the Tenth Amendment means just what it says. However, the clarity of these decisions has been obscured by several of the recent opinions of this Court. Thus, in *Hopkins Savings Association v. Cleary*, 296 U. S. 315, the Court held-(pp. 338-339) that "The destruction of associations established by a state is not an exercise of power reasonably necessary for the maintenance by the central government of other associations created by itself in furtherance of kindred aims."

<sup>48</sup> We are not here concerned with the ebb and flow of the "states' rights" doctrine (summarized in Corwin, The Commerce Power versus States Rights), but with those cases in which the Court has considered the specific application of the Tenth Amendment to powers assumed to have been granted to the national government. None seems to have viewed it as an independent limitation. Collector v. Day, 11 Wall. 113, relies upon the Tenth Amendment but the decision seems to have been placed ultimately upon the supposed scope of the federal taxing power. In Kansas v. Colorado, 206 U. S. 46, 89-90, the Court rejected the argument of the United States that powers not delegated to it could be exercised if they were beyond the competence of the states: the Tenth Amendment, "seemingly adopted with a prescience of just such contention" made "absolutely certain" that the national government should not "attempt to exercise powers which had not been granted." In Hammer v. Dagenhart, 247 U.S. 251, the Court placed reliance on the Tenth Amendment but this seems to have been done merely to supplement the determination of "the controlling question for decision," which was whether it is "within the authority of Congress in regulating commerce among the States to prohibit the transportation in interstate commerce of" goods manufactured with child labor (p. 269).

This seems to be a construction of the federal powers; as such there need be no quarrel with it. But the opinion appears to view this conclusion as based upon the Tenth Amendment, independently of the scope of the powers granted to the United States (pp. 335, 336). In United States v. Butler, 297 U. S. 1, the Court held that the Agricultural Adjustment Act tax was not a true tax, because they were earmarked for benefit contracts (p. 61), and that the payments to farmers were not merely expenditures under the general welfare clause, because coupled with coercive conditions in effect regulating agricultural production (pp. 71, 73). Having reached these conclusions, the decision might appropriately have been that the Act lay outside the federal powers. But the opinion seems to decide that, "wholly apart from the scope of the general welfare clause,' the act invades the reserved rights of the states" (p. 68). Similarly, in Ashton v. Cameron County District, 298 U. S. 513, 527, the Court held Chapter IX of the Bankruptcy Act invalid, not because the bankruptcy power did not extend to the public debtors there specified, but because, if the Act were sustained, "the sovereignty of the State, so often declared necessary to the federal system, does not exist" (p. 531). Indeed, the

Amendment. But its analysis seems basically similar to the other cases, in that the scope of the federal power was considered largely irrelevant and the validity of the Act was judged solely on the basis of the powers taken to be reserved to the States.

related to the general 'subject of bankruptcies' "
(p. 527). rinally, in Steward Machine Co. v. Davis, 301 U. S. 548, and Helvering v. Davis, 301 U. S. 619, the Court sustained Titles IX, VIII, and II of the Social Security Act in opinions which not only held the titles within the powers granted to the federal government but in addition held that they did not violate the Tenth Amendment. The circumstances relied upon to show the latter conclusion might, by the traditional analysis, more appropriately have served to show that the Titles were a valid exercise of the federal power to tax and to spend for the general welfare. 50

In none of these opinions did the Court explicitly announce a departure from its historic treatment of the Tenth Amendment. The Government does not believe that, merely because of implications derived from the form in which these opinions have been cast, so important a constitutional doctrine should be taken to have been overruled sub silentio. Particularly is this the case when other, and contemporaneous, decisions retain the accepted interpretation of the Tenth Amendment. In Ashwander v. Tennessee Valley Authority, 297 U. S. 288, the Court refused to consider

<sup>&</sup>lt;sup>50</sup> A somewhat similar approach may be indicated in Cincinnati Soap Co. v. United States, 301 U. S. 308, 312, where the Court said "The Tenth Amendment is without application, since the powers of the several states are not invaded or involved."

objections raised under the Tenth Amendment to the sale of power by the Government. It said (pp. 330-331): "To the extent that the power of disposition is thus expressly conferred, it is manifest that the Tenth Amendment is not applicable The question is as to the scope of the grant and whether there are inherent limitations \*." In Labor Board v. Jones & Laughlin, 301 U. S. 1, and in Associated Press v. Labor Board, 301 U.S. 103, the Court, having determined the National Labor Relations Act as applied to be an exercise of the commerce power, found it unnecessary even to discuss the Tenth Amendment.51 Similarly, in Sonzinsky v. United States, 300 U.S. 506, the Court saw no occasion to consider petitioner's argument based on the Tenth Amendment (p. 508), but contented itself with the decision that the firearms tax was an exercise of the taxing power. Finally, in United States v. California, 297 U. S. 175, 184, the Court declared, in a slightly different connection, that "the sovereign power of the states is necessarily diminished to the extent of the grants of power to the federal government."

3. In none of these recent cases has the Government presented any detailed analysis of the origin

of the effect of the Tenth Amendment was urged by the dissenting opinion in the Jones & Laughlin case (301 U.S. at. 97) and by respondents in the Associated Press case (301 U.S. at 105), in Labor Board v. Freuhauf Co., 301 U.S. 49, 51, and in Labor Board v. Clothing Co., 301 U.S. 58, 71.

of the Tenth Amendment or of the decisions under at; in none has a considered or detailed argument been offered in support of the position contrary to that of the Government; in none has the Court expressly considered the basis for its occasional assumption that the Tenth Amendment operates as an independent limitation upon the federal powers. Certainly, if this Court is to abandon its traditional position, in apparent disregard of the intention of the framers, the importance of the question requires that this choice should not be made without full discussion.

The argument of appellees, so far as it is based on the Tenth Amendment, must of necessity begin with the premise that the power in question is reserved to the states alone and therefore cannot be exercised or affected by the central government. This, it is to be noted, assumes that the scope and existence of an exclusive state power can be determined without reference to the federal powers. This assumption is contradicted by the whole course of our constitutional history. If a given power is reserved to the states alone, it is only because it is not delegated to the national government. The Constitution, with minor exceptions, contains no affirmative grant of exclusive power to the states. To determine the existence of the federal power by first inquiring if it is reserved to the states presents the fallacy of petitio principii in its most patent form. Judgment upon the scope of the federal

power cannot fail to be clouded if the issue, in part or in whole, be resolved in advance by the assumption that the same or a related power belongs affirmatively or exclusively to the States. Recognition of the importance of protecting the independence of the States would thus imperceptibly be transmuted into vitiation of powers which have in fact been granted to the Federal Government.

Appellees, we anticipate, will not argue that there is any attribute of the debts of taxing agencies of the State which means that they are inherently immune from governmental power as such. The only difficulty rests in the nature of our federal system. This, at least, must be the premise of the argument based on the Tenth Amendment. But it has been shown that the states are, under the Constitution, incompetent to provide effective bankruptcy or insolvency proceedings for their taxing agencies and subdivisions (supra, pp. 20-22). Neither the Tenth Amendment nor the implications of our dual system can be thought to forbid the Federal Government to exercise proper governmental powers which are apparently delegated to the United States and which the Constitution forbids to the states. Any such conclusion has the thoroughly shocking premise that, in the process of distributing appropriate governmental powers between the local and the national governments, some powers were accidentally and irretrievably lost. It seems to need no argument to demonstrate

that any such contention must fall of its own weight: the Constitution was designed to establish a more effective government, not to cripple or to destroy the governmental powers of both the states and the nation.

Indeed, the Tenth Amendment was designed to prevent just such evaporation of governmental. power as it is here contended to require (supra, pp. 50-51). The present Act contemplates an exercise of the federal bankruptcy power and, in conjunction, the simultaneous operation, either tacitly or by express enactment, of state law authorizing the taxing agency to proceed. Cf. Chicago Title Co. v. 4136 Wilcox Corp., No. 23, this Term. To hold that state and nation may not thus cooperate would be doubly to offend against the Tenth Amendment. It would deny to the Federal Government a power which clearly has not been reserved to the states, and, at the same time, deny to the state a power which, by the very hypothesis of the decision, would be held not to have been granted to the United States.

The constitutional grant of federal power is, then, the measure of the power granted—not some hypothetical reservation of a specific power to the states. This principle of constitutional interpretation, which is a part of our dual system of government, is in no way inconsistent with such a system. Thus, the fact that ours is a federated system of government may have a bearing in resolving difficult questions of construction as to the

scope of a granted power. This consideration, for example, underlies the decisions of this Court that the federal government may not, under the pretext of exercising a delegated power, exercise powers not granted to it. As the Court said in the Ashwander case (297 U. S. at 338):

we may assume that it [federal action] must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States. See Kansas v. Colorado, supra.

See, also, McCulloch v. Maryland, 4 Wheat. 316, 423; Child Labor Tax Case, 259 U. S. 20, 39. Again, as in the present case, the denial of a specific power to the states should be a weighty factor in determining whether or not the power in question has been granted to the federal government. Still another principle has developed in cases dealing with the scope of the federal taxing power, in which it has been held that the power may not be used so as to destroy or burden the essential instrumentalities or activities of the state governments. This doctrine has not been applied to other powers of the Congress. United States v. California, 297 U.S. 175, 184-185. Indeed, since the Constitution creates a federal government primarily by granting certain plenary powers and withholding others, the doctrine applied in the tax cases must necessarily be an exceptional one.

But this exceptional doctrine, even were it applicable, in no way impairs the basic principle that

the question must always be whether or not the power has been granted to the United States. If the powers and rights of the states were made the first inquiry, it would result in an exaggerated form of that "perfect solecism which affirms" that a national government should exist with certain powers, and yet that in the exercise of those powers it should not be supreme" (Story on the Constitution, II, sec. 1837).

The plain meaning of the language of the Tenth Amendment, the circumstances of its adoption, and a century of constitutional litigation support the approach represented by the Ashwander and Jones & Laughlin opinions. We respectfully submit that it should be adopted in this case. Any other rule must condemn constitutional interpretation to a perpetual servitude to sophistry and contradiction: neither layman nor scholar can ever be expected to contrive a satisfactory touchstone by which to determine what powers granted to the national government may not be exercised because reserved to the states as a power "not delegated to the United States."

B. The Act invades no reserved powers and infringes no sovereign rights of the States

It has been shown that the Act of August 16, 1937, is an exercise of the bankruptcy powers granted to Congress, and that accordingly there can be no question as to the effect of the Tenth Amendment. So, too, there is no occasion in this case to consider whether the plenary bankruptcy

power may be subject to limitations akin to those placed on the taxing power. For, however this may be, the Act contains nothing that can be said to be inconsistent with our dual system of government. This is made plain by a mere reading of the Act; however, to err on the side of caution, we shall detail the provisions which affirmatively insure that there shall be no violation of the rights of the states.<sup>52</sup>

1. In the first place, the proceedings are wholly voluntary. Section 83 (a) extends the privilege of invoking the bankruptcy jurisdiction only to the taxing agency itself. Chapter X contains no provision designed to induce the application for composition or even to influence the taxing agency in its decision. An Act which operates only when the state taxing agency itself freely chooses to take advantage of its provisions hardly can be said to threaten the independence of the states or of their taxing agencies. See Massachusetts v. Mellon, 262 U. S. 447, 480.

The taxing agency, of course, is subject to the full control of the State, and its powers are only those granted by the State. Unless these powers, expressly or by implication, include authority to

in the preceding section, should be of the view that the Tenth Amendment operates as an independent limitation upon the federal powers, it would be noted that these provisions would also serve to establish that the Act of August 16, 1937, contains nothing contrary to that Amendment.

compose its debts and to invoke the jurisdiction of the bankruptcy court, the taxing agency cannot seek the benefit of the Act of August 16, 1937. Not only, therefore, is the choice of the taxing agency wholly voluntary, but it must necessarily be made subject to the provisions of State law.

2. Even after the taxing agency has itself invoked the bankruptcy jurisdiction, the court is without any control over its fiscal affairs or governmental activities. The plan of composition must be prepared by the taxing agency and agreed to by 51 per cent of its creditors before the petition is filed, Section 83 (c). The power of the judge is limited to the choice between approval of the plan filed or dismissal of the petition; changes or modifications must be initiated by the taxing agency and its petitioners. Section 83 (e). The court has no power to alter tax rates, compel the collection of taxes, rearrange the debt structure, or to direct or influence the governmental functions of the taxing agency. Its only powers are to approve or reject the plan offered to it by the taxing agency, supervise the details of the proceeding, and, if 66% per cent of the creditors have accepted the plan of composition, to compel its acceptance by the minority creditors. As this Court has said, in Cumberland Glass Co. v. De Witt, 237 U.S. 447, 453, composition "is a proceeding wholly voluntary on both sides Except for this coercion of the minority, the inter-

. Author was been distorted

vention of the court of bankruptcy would hardly be necessary." 43

If the plan is approved, the taxing agency has obtained a sorely needed benefit; if it is disapproved, the taxing agency is in the position it was before its petition was filed. In neither case have its affairs been subjected to any control or interference by the court. It would be difficult to contrive a statute which offered federal aid to the state taxing agencies so completely untouched by correlative duties or liabilities on the part of the taxing agencies. The act subjects only the minority creditors to any form of involuntary control or regulation. This impact on the creditor is wholly immaterial to the effect of the act on the taxing agency.

It must be remembered that the typical taxing agency to which the Act of August 16, 1937, is applicable is fully subject to suit and that federal courts, in the exercise of their general equity powers, have appointed receivers to collect the taxes and to control the revenues of taxing agencies subject by statute to similar control in the state courts (supra, pp. 39-41). The bankruptcy proceedings, on the other hand, may be initiated only by the taxing agency and the court is carefully restricted

Lane, 125 Fed. 772 (D. Mass.), with the preface that "the nature of composition proceedings is nowhere better stated than by Judge Lowell."

in the powers which it may exercise over the debtor in the course of the proceedings. The control of the court is negligible, when compared to the sweeping powers which federal equity courts, with the sanction of this Court, have exercised over similar state taxing agencies. To hold, as appellees ask, that the receivership proceeding lies within the federal powers, but that the bankruptcy proceeding does not, would have extraordinary implications. Such a decision would seem necessarily to be based upon either of two propositions: that a federal power possessed by the courts cannot be exercised if Congress authorizes it, or, alternatively, that the general power to decide controversies between citizens of different states reaches farther into the field of insolvency than does the specific power to legislate "on the subject of bankruptcies." It requires no argument to demonstrate that either of these premises is completely untenable. It must follow that the conclusion, which can be based on no other proposition, is equally unsound.

3. There can, we believe, be no thought that the taxing agency surrenders any of its rights and powers to the bankruptcy court. But Congress, in its solicitude to guard against any thought that it had invaded the sovereignty of the states, has gone farther and has ensured that the federal court should not be an unwitting partner of the taxing agency in any violation of state law. The court

can approve the plan of composition only "if satisfied that \* \* \* the petitioner is authorized by law to take all action necessary to carry out the plan" Section 83 (e).

Moreover, under Section 83 (c), the judge can enter no order in the course of the proceeding which would interfere with any political or governmental power of the petitioner, with any property or revenues necessary for essential governmental purposes, or unless the plan of composition so provides, with any income-producing property. To make the matter clear beyond doubt, Congress has provided in Section 83 (i) that:

Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

4. Such is the structure of the federal act. It seems plain beyond argument that no substantial impairment of state sovereignty can be claimed. But, if there were doubt, that doubt has been removed by the State of California itself. By Act of September 20, 1934 (Laws of 1934, Ex. Sess., c. 4, sec. 3), the legislature provided:

Any taxing district in the State of California is hereby authorized to file the petition mentioned in the Federal Bankruptcy Statute, and to incur and pay the expenses thereof and any and all other expenses necessary or incidental to the consummation of the plan of readjustment contemplated in such petition or as the same may be modified from time to time.<sup>54</sup>

The State of California has itself determined that the federal bankruptcy power does not threaten its sovereignty when applied to the taxing districts of the State. We submit that the appellees accordingly should not be heard to argue for a supposed immunity which the State itself has renounced.

More generally, it is a consideration of much weight that sixteen States have expressly sanctioned some or all of their subordinate taxing agencies to invoke the aid of the federal bankruptcy courts.<sup>55</sup> Since Chapter X has been in force only

given by Chapter IX of the Bankruptcy Act, and defines "Federal Bankruptcy Act" as Chapter IX "and acts amendatory and supplementary thereto, as the same may be amended from time to time." Whether this act is applicable to Chapter X is a question of state law not necessary to be decided at this time. The fact that the State did not consider Chapter IX to be an invasion of the sovereignty means, a fortiori, that Chapter X is not so considered.

Arizona, L. 1935, No. 197 (county, city, or town); Arizona, L. 1935, c. 17 (taxing district); Arkansas, L. 1937, Act 212, sec. 12 (levee and drainage districts); California, L. 1934 (Ex. Sess.), c. 4 (taxing districts); Florida, L. 1933, c. 15878 (municipalities, taxing districts, and political subdivisions); Iowa, L. 1935, c. 90 (levee and drainage districts); Louisiana, L. 1935 (Ex. Sess.), pp. 529, 532 (political subdivisions)

since August 16, 1937, no state has yet authorized proceedings specifically under this Chapter. Four states which had not passed statutes giving express consent to proceedings under Chapter IX joined in the brief amicus curiae on the petition for rehearing in Ashton v. Cameron County District, 298 U. S. 513. Thus, some twenty states have, in one form or another, indicated that the extension of the federal bankruptcy power to their political subdivisions contains no threat of impairing their

cal subdivisions, municipalities, etc.); Michigan, L. 1935, No. 53 (municipality or other political subdivision); Minnesota, L. 1935, c. 119, sec. 3 (municipality); see also Minnesota Laws of 1937, c. 104; New Jersey, L. 1935, c. 190 (municipality); Ohio, L. 1934 (Spec. Sess.), p. 348 (municipalities and other taxing subdivisions); Oklahoma, L. 1935, p. 123 (municipalities or other political subdivisions); Oregon, L. 1935, c. 43 (irrigation or drainage district); Pennsylvania, L. 1935, No. 146 (political subdivision); Texas, L. 1935, c. 107 (municipalities, taxing districts, and political subdivisions); Washington, L. 1935, c. 143 (taxing districts).

The statutes of Arkansas, Florida, Iowa, Louisiana, Oklahoma, and Texas are applicable to any federal bankruptcy law; those of Arizona, California, Minnesota, New Jersey, Oregon, Pennsylvania, and Washington to Chapter IX "and acts amendatory or supplementary thereto"; and those of Alabama, Michigan, and Ohio to Chapter IX only.

<sup>86</sup> Minnesota Laws of 1937, c. 104, however, in general terms authorizes its municipalities to enter into debt adjust-

ment agreements with its creditors.

<sup>57</sup> No. 859, October Term, 1935. Ten states joined in the brief; of these, Colorado, Mississippi, Missouri, and New Mexico had not by statute consented to the bankruptcy proceedings.

sovereignty. No state has forbidden its subdivisions to seek the aid of the bankruptcy court. Respondents, therefore, ask to have this Court brush aside not only the judgment of Congress but also that of twenty states. The Government submits that, whatever the nature of the guardianship of state sovereignty which this Court should exercise, it is not one which should disregard the great weight to be given the considered judgment of both the nation and the states.

The bankruptcy power cannot, we believe, properly be analogized to the taxing power. That power, by its nature and by its historical development, is to be distinguished from the plenary powers of Congress. United States v. California, 297 U. S. 175, 184-185; cf. Board of Trustees v. United States, 289 U.S. 48, and the Constitution grants "plenary power to Congress over the whole subject of bankruptcies," Hanover National Bank v. Moyses, 186 U.S. 181, 187. But even if the bankruptcy power were subject to all of the restrictions placed on the taxing power, respondents have no ground on which to assail the Act of August 16, 1937. In the first place, the State of California has consented to its operation. This removes all objection based upon a supposed invasion of the sovereignty of the State. Baltimore National Bank v. State Tax Commission, 297 U.S. 209. In the second place, the restrictions placed upon the taxing power

do not extend beyond the necessity of maintaining the dual system of government. National Bank v. Commonwealth, 9 Wall. 353, 362; Helvering v. Powers, 293 U. S. 214, 224–225. We have shown that this Act contains no possibility whatever of destroying the necessary independence of the states.

5. In result, the Act of August 16, 1937, offers assistance only if the taxing agency seeks it. It gives the bankruptcy court no control over the agency after its jurisdiction is invoked. It insures that no law or power of the state is impaired. It offers only two things that the taxing agency could not secure by contract with its creditors: (1) a regularized procedure, and (2) a means by which to compel minority creditors to accept reasonable composition. Neither of these in any manner infringes the sovereignty of the states. The power to compel acceptance by minority creditors is the heart of the bankruptcy power and, it is to be noted, operates not on the taxing agency but upon its creditors. It may be assumed that the minority creditors are coerced by proceedings under Chapter X. But against this the Constitution offers no protection: coercion of the minority creditors is the heart of the bankruptcy power. This power is not to be vitiated by the minority creditors' attempt to translate their coercion into that of the states or their taxing agencies.

## C. Ashton v. Cameron County District is inapplicable

Respondents, we suppose, will rely chiefly upon Ashton v. Cameron County District, 298 U.S. 513. In that case this Court held the original bankruptcy act for the relief of state taxing districts, Chapter IX, to be unconstitutional. The decision, as we read it, was placed chiefly upon the ground that Chapter IX so interfered with the powers of the states and their political subdivisions that "they are no longer free to manage their own affairs; the will of Congress prevails over them; although inhibited, the right to tax might be less sinister. And really the sovereignty of the State, so often declared necessary to the Federal system, does not exist" (p. 531). The Government submits, first, that the Ashton case is inapplicable to the Act of August 16, 1937, Chapter X. If, however, the Court should consider the decision to be so broad as to cover the present Act, it is respectfully urged that the rule of the Ashton case be reconsidered and modified or overruled.

1. The circumstances leading up to the enactment of Chapter X are closely analogous to those relating to the enactment of the second Frazier-Lemke Act. There the original provisions for the relief of farmers had been held unconstitutional in Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555. This Court in Wright v. Vinton Branch, 300 U. S. 440, sustained the new act and gave much weight (p. 457) to the fact that—

The measures received careful consideration before the committees of the House and the Senate. Amendments were made there with a view to ensuring the constitutionality of the legislation recommended. The Congress concluded, after full discussion, that the bill, as enacted, was free from the objectionable features which had been held fatal to the original Act.

Chapter X was drafted in the light of the Ashton case. Here, too, a Congressional committee held hearings devoted both to the need for legislation of this sort and to the constitutional limitations announced by this Court. The Judiciary Committee of the House submitted a carefully considered report (H. Rept. No. 517, 75th Cong., 1st Sess.) which the Senate Judiciary Committee adopted (Sen. Rpt. No. 911, 75th Cong., 1st Sess.). In this report (printed in full as Appendix D to appellant's brief in No. 772) the Committee states:

The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality

Reorganization, Committee on the Judiciary, House of Representatives (H. R. 2505, 2506, 5403, 5969), 75th Cong., 1st Sess.

which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable, and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill.

There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts. Therefore, relief must come from Congress, if at all. The committee are not prepared to admit that the situation presents a legislative no-man's land. It is the opinion of the committee that the present bill removes the objections to the unconstitutional statute, and gives a forum to enable those distressed taxing agencies which desire to adjust their obligations and which are capable of reorganization, to meet their creditors under necessary judicial control and guidance and free from coercion, and to effect such adjustment on a plan determined to be mutually advantageous.

The bill was fully considered on the floor of each House of Congress, both as to the necessity of the legislation and as to its constitutionality under the Ashton case (81 Cong. Rec. 6311-6329, 8383, 8541-8550). The measure passed the House by a vote of 123-16, and the Senate without record vote (81 Cong. Rec. 6329, 8550). The Act of August 16,

1937, accordingly is supported by a presumption of constitutionality of perhaps uncommon weight; certainly the deliberate opinion of Congress that notwithstanding the *Ashton* case this legislation is constitutional cannot, as respondents would have it, lightly be disregarded.

2. The judgment of the Congress that the Ashton case is inapplicable to this Act is supported by important differences between the two acts. Of these, perhaps the most basic is the contrast between the debt readjustment provisions of Chapter IX and the composition provided in Chapter X.

Chapter IX of the Bankruptcy Act, added by the Act of May 24, 1934, c. 345, 48 Stat. 798, provided in Section 80 (a) that any municipality or political subdivision could file a petition for "readjustment" of its debts. The bankruptcy court, on approving the petition, was invested with significantly wider powers than is the case under Chapter X. It could require the taxing district "to file such schedules and submit such other information as may be necessary to disclose the conduct of the affairs of the taxing district and the fairness of any proposed plan." Section 80°(c) The bankruptcy court could, with the approval of the district, "direct the rejection of contracts of the taxing district executory in whole or in part." Section 80 (c) (5). The court might "require the taxing district to open its books, records, and files to the inspection of any creditors," Section 80 (c) (7). The order of the court, approving the plan of readjustment, was binding not only on the creditors but also on the taxing district. Section 80 (g).

In addition, Chapter IX contained general provisions which, when construed in the light of the Court's opinion in the Ashton case, embraced a wide congers of powers which might have been thought to endanger the States' control of their political subdivisions. The Court there declared the states "are no longer free to manage their own affairs", and that to sustain the act would mean that the federal government "may impose its will and impair state powers." (298 U.S. at 531.) This fear as/to the scope of the federal power must have related to Section 80. (b) (2), under which the "plan of readjustment" could include "such other provisions and agreements, not inconsistent with this chapter, as the parties may desire." Since the term readjustment has connotations perhaps as broad as reorganization or rearrangement, it might have been felt, for example, that new means of raising revenues or new modes of taxation could be devised in the bankruptcy court irrespective of state authority.

Not one of these elements of control by the Federal court is present in proceedings under Chapter X. The taxing agency here retains a more complete independence of the bankruptcy court than would have been the case under Chapter IX. That

chapter was modeled upon Section 77 of the Bankruptcy Act. Cameron County District v. Ashton, 81 F. (2d) 905, 907-908 (C. C. A. 5th). Accordingly, and in view of the broader powers conferred on the court by Chapter IX, it is much closer than is Chapter X to the more typical bankruptcy proceedings in which the bankruptcy court is given a plenary jurisdiction over the debtor's property wherever found. See Continental Bank v. Rock Island Ry., 294 U. S. 648, 683; cf. Straton v. New, 283 U. S. 318, 321; Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300, 307; Mueller v. Nugent, 184 U. S. 1, 14.

Chapter X, on the other hand, makes provision not for a readjustment of the debts but for their composition. It derives from the Act of 1874 (c. 390, 18 Stat. 183), which became Section 12 of the Bankruptcy Act of 1898 (c. 541, 30 Stat. 549). Under these provisions it has become settled that composition, while a proceeding in bankruptcy, Wilmot v. Mudge, 103 U.S. 217, 219, is a wholly voluntary proceeding so far as the debtor and the majority creditors are concerned, and one which is entirely contractual rather than coercive in nature. Cumberland Glass Co. v. De Witt, 237 U. S. 447, 453-454; Nassau Works v. Brightwood Co., 265 U. S. 269, 271; Myers v. International Trust Co., 273 U. S. 380, 383; Louisville Bank v. Radford, 295 U. S. 555, 585. Thus, a composition proceeding, which in substance is no more than a contract between the debtor and his creditors, can offer no interference with the state taxing agencies even though a readjustment proceeding might be thought to invest the federal court with powers incompatible with the independence of the states.<sup>50</sup>

3. So far as this case is concerned, there is another important distinction from the Ashton case. The Cameron County Water Improvement District Number One, respondent in that case, was held to be a political subdivision of the state (298 U.S. at 527-528). Indeed, the Act was in terms applicable only to political subdivisions. Southern Sierras Power Co. v. Imperial Irrigation District, 87 F. (2d) 355, 356 (C. C. A. 9th). The control over its affairs given to the bankruptcy court by Chapter IX was accordingly held to be the equivalent of a similar control over the affairs of the state (298 U.S. at 531). But in the case at bar the Lindsay-Strathmore Irrigation District is not a "political subdivision" of the State of California, and Chapter X is carefully constructed to permit a separable operation.

Ry., 294 U. S. 648, 672, that the plan of reorganization contemplated by Section 77 "cannot be distinguished in principle from the composition which creditors authorized by the act of \* \* 1874." This was directed toward the constitutionality of the proceeding as affected by the fact that it did not look toward an adjudication of bankruptcy. The statement obviously has no application where the question is the extent of control exercised over the debtor.

The status of irrigation districts has been the object of a rather refined analysis in the local law." It is clear, on the one hand, that the districts are "public" corporations or agencies, performing limited governmental functions. In re Madera Irrigation District, 92 Cal. 296, 317 (holding the Act constitutional): Lindsay-Strathmore Irrigation District v. Superior Court, 182 Cal. 315 (granting the statutory privilege of a "public agency" to disqualify a judge): Nissen v. Cordua Irrigation District, 204 Cal., 542, 544, and Morrison v. Smith Bros., Inc., 211 Cal. 36, 40 (no tort liability for negligence of agents); Sutro Heights Land Co. v. Merced Irrigation District, 211 Cal. 670, 703 (no mandate to compel a public corporation to spend money); Box v. Young, 219 Cal. 243 (its papers are public documents within the rules of evidence).

On the other hand, it is equally clear that the irrigation districts fall considerably short of the status of political subdivisions. The State Constitution, in Section 14 of Article I, distinguishes between the State, its political subdivisions, and districts

<sup>&</sup>lt;sup>60</sup> They are organized under the Laws of 1897, p. 254, as amended; Deering's General Statutes, Act No. 3854. In addition to the power of imposing special assessments, they may condemn land (Secs. 15, 16); they may require banks to take security (Sec. 27b); their organization is under the control of the county supervisors and the state engineer (Sec. 2); their bond issuance is under the control of a state commission (Sec. 30a et seq.); their officers are elected by the voters in general (Sec. 3) and must give official bonds Sec. 19a). The districts are, of course, subject to suit (Sec. 15b).

such as these; the power of eminent domain is given to each separately. In San Diego v. Linda Vista Irrigation District, 108 Cal. 189, the District was allowed to assess pueblo lands of the city; it was not a forbidden "tax" because the district was (p. 193)—

a local organization to secure a local benefit. \* \* \* the state, or the public at large derives no direct benefit, but only that reflex benefit which all local improvements confer.

See Bettencourt v. Industrial Accident Commission, 175 Cal. 559, 561, declaring that the similar reclamation districts were not "public corporations", covered by the Workmen's Compensation Act, because "they possess no political or governmental powers." Accordingly, the irrigation districts have repeatedly been denied the status of a municipal corporation or a political subdivision. Turlock Irrigation District v. White, 186 Cal. 183, 187 (taxability of certain property of "municipal corporations" inapplicable); Crawford v. Imperial Irrigation District, 200 Cal. 318, 325-326 (may employ agents to influence legislation); La Mesa Irrigation District v. Hornbeck, 216 Cal. 730, 734-735 (tax lien inferior to those of counties and municipalities); Wood v. Imperial Irrigation District, 216 Cal. 748, 753 (cannot take security for bank deposits).

Thus, while the irrigation district exercises a narrowly restricted group of governmental powers,

the California courts have repeatedly announced that it "is not a political subdivision of the state or county, or a political subsidiary at all" (Wood v. Imperial Irrigation District, 216 Cal. 748, 753). If the State of California, for its domestic purposes, itself refuses to give to the District all of the investiture of the sovereignty of the State, we submit that this Court should not invalidate an Act of Congress because of a supposed interference with the sovereignty of California. Even if the Act of August 16, 1937, should be thought to contain a threat to state sovereignty, in any of its applications, it cannot properly be said to threaten the State through its application to a taxing agency which the State itself has declared not to be entitled to share the full scope of its sovereign status.

The Act of August 16, 1937, is accordingly valid as applied in the case at bar, whatever extension be given the rule of the Ashton case. There is no occasion to consider its validity in other circumstances or in other applications. Section 81 confers jurisdiction over six general types of taxing agencies. Immediately following this classification of taxing agencies, Section 81 provides:

or They may be summarized as: (1) agricultural improvement districts; (2) sanitary and paving districts; (3) road improvement districts; (4) school districts; (5) port improvement districts; (6) any city, town, village, borough, township, or other municipality.

It may be noted that parishes and counties, included under Chapter IX, are omitted from the sixth classification; this was done because Congress considered them to be more truly

That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

It is, therefore, perfectly plain that Congress intended Chapter X to stand so far as it covered any taxing agency to which it could constitutionally be applied. It follows, since the Lindsay-Strathmore Irrigation District is not a political subdivision of the State, that the judgment must be reversed whatever the validity of the Act as applied to taxing agencies which under local law share enough of the powers and immunities of the sovereign to be termed political subdivisions.

4. It has been shown that the Act of August 16, 1937, and the case at bar are not controlled by the Ashton case. Whether or not that decision be sound, it plainly should not be given the very considerable extension which would be required to sustain the judgment of the court below.

However, we recognize that the opinion is couched in broad terms and might possibly be construed as intended to be applicable to all bankruptcy legislation which affected any taxing agency

political subdivisions of the states than the remaining corporations. See 81 Cong. Rec. 6326.

of the state. If the Court should be of the view that such is the scope to be given the Ashton opinion, the Government respectfully asks that it be reexamined and overruled.<sup>62</sup>

It has been shown that the Act of August 16, 1937, is urgently necessary to aid sorely pressed taxing agencies and their remediless creditors (supra, pp. 14-20). It has been shown that it is a valid exercise of the bankruptcy powers conferred on Congress by the Constitution (supra, pp. 25-43). It has been shown that the Constitution correlatively denies to the states the power to deal with this compelling need (supra, pp. 20-22). It has been shown that the Tenth Amendment has no independent force to dry up powers otherwise possessed by the Federal Government (supra, pp. 47-66). It has been shown that the Act of August 16, 1937, contains no colour of intereference with or dictation of the affairs of the taxing agencies which seek its benefits (supra, pp. 67-75). It seems to the Government that a decision that the Act is nonetheless

House Judiciary Committee, frankly stated that the sixth classification of taxing agencies (see footnote 61) implied proceedings which would be unconstitutional under the Ashton case. He felt, however, that it was not only the right but the duty of the Congress to present the question once more to this Court, since the decision, if allowed to stand, threatened a grave impairment of the powers of the States, in that it forbade them to authorize its political subdivisions to enter into bankruptcy proceedings. 81 Cong. Rec. 6314, 6327. See also, Mr. Chandler, 81 Cong. Rec. 6323.

unconstitutional might threaten a catastrophic effect, not only upon the insolvent taxing agencies and their creditors but also upon the constitutional development of the nation. A federated nation implies the distribution, not the destruction of governmental powers. If the Ashton case compels a decision to the contrary, it should be overruled.

#### CONCLUSION

For the reasons which we have set out, the Act of August 16, 1937, is a valid exercise of the bank-ruptcy powers granted to Congress by the Constitution. It is, therefore, respectfully submitted that the judgment of the court below should be reversed.

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## APPENDIX

Act of August 16, 1937, c. 657, 50 Stat. 653; U. S. C., Title 11, c. X:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States", as approved July 1, 1898, and Acts amendatory thereof and supplementary thereto be, and they are hereby, amended by adding thereto a new chapter, to be designated "chapter X", to be and read as follows:

## "CHAPTER X

## "ADDITIONAL JURISDICTION

"SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said taxing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d)

from any combination thereof; (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or publicschool authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality: Provided, however, That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

## "DEFINITION

"Sec. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

"That the term 'petitioner' shall include any taxing agency or instrumentality re-

ferred to in section 81 of this chapter.

"The term 'security' shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

"The term 'creditor' means the holder of

a security or securities.

"Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

"The term 'security affected by the plan' means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a

composition agreement.

"The singular number includes the plural and the masculine gender the feminine.

## "COMPOSITIONS

"Sec. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-as-

sessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of \$100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of the Uniform Bankruptcy Act of 1898, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have accepted it in writing. There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

"The 'plan of composition,' within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issu-

ance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

"No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing,

upon notice to the parties interested.

"For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

"(b) Upon approving the petition as properly filed, or at any time thereafter, the

judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for the hearing.

"At any time not less than ten days prior to the time fixed for the hearing, any cred-



itor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained, shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and Provided, however, That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

"At the hearing, or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining

the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceeding as may be just: Provided, however, That no fees, compensation, reimbursement or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from . any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any other making such determination or award to the United States Circuit Court of Appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals. which may be taken in the proceeding, and such appeal shall be heard summarily.

"On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the pro-

ceeding.

"(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assess-

ments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities, shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any incomeproducing property, unless the plan of composition so provides.

"(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner: Provided, however. That it shall not

be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or

class of creditors.

"(e) At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors: (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

"Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such

creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: Provided, however, That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem

proper for the taking of such action.

"(f) If an interlocutory decree confirming the plan is entered as herein provided, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced. and, if filed or evidenced, whether or not allowed, including creditors who have not, as

well as those who have, accepted it.

"(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

"(h) This chapter shall not be construed as to modify or repeal any prior, existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: Provided, however, That the initiation of proceedings or the filing of a petition under section 80 shall not constitute a bar to the same taxing agence, or instrumentality initiating a new

proceeding under section 81 thereof.

"(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

## "TERMINATION OF JURISDICTION

"SEC. 84. Jurisdiction conferred on any court by section 81 shall not be exercised by such court after June 30, 1940, except in respect of any proceeding initiated by filing a petition under section 83 (a) on or prior to June 30, 1940."

# FILE COPY

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FEB 5 1938

CHARLES ELMORE CROPLEY SUPREME COURT OF THE UNITED

OCTOBER TERM, 1937

## No. 757

THE UNITED STATES OF AMERICA. 2'80

Appellant,

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL.

## No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT. Appellant, US.

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

> MAURICE E. HARRISON, Counsel for Appellees.

W. COBURN COOK, Of Counsel.

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# DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

In BANKBUPTCY.

No. 4575.

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY.

STATEMENT OF GROUND MAKING AGAINST JURIS-DICTION OF THE UNITED STATES SUPREME COURT AND MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT.

Come now Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the will of Martin Bekins, deceased; Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the will of Katherine Bekins, deceased; J. R. Mason, James Irvine, A. Heber Winder, Trustee for Eva A. Parrington Trust; C. A. Moss, and James H. Jordan, and make the following statement of ground against the jurisdiction of the Supreme Court of the United States of America on this appeal by the United States of America, and respectfully move that the appeal be dismissed, or in the alternative that the judgment of the District Court be affirmed, and show:

The question involved in the appeal presents no substantial Federal question. In the case of Ashton & Cameron

County Water Improvement District No. 1, 298 U. S. 513, 56 Sup. Ct. 892, this Court determined that Chapter IX of the Bankruptcy Act of 1898 was unconstitutional and void. Chapter X of the Bankruptcy Act of 1898, approved August 24, 1937, is not materially different from Chapter IX in so far as it applies to a California irrigation district.

This Court, in the case of Waterford Irrigation District v. Covell, 300 U. S. 682, 57 Sup. Ct. 753, and more particularly in the case of Merced Irrigation District v. Bekins, — U. S. —, 58 Sup. Ct. 30, declined to review the Ashton case. In the latter case the briefs presented the precise issue, whether a California irrigation district is a political subdivision in the sense used in the Ashton case.

The only material distinction between Chapter IX and Chapter X is that in Chapter X irrigation districts are classed as taxing agencies and irrigation districts are classified as agricultural improvement districts or local improvement districts devoted chiefly to the improvement of lands for agricultural purposes, whereas in Chapter IX they had been classified as political subdivisions.

The opinion of this Court in the Ashton case does not proceed upon a question of classification. The district was held immune to the bankruptcy petition because it was a State agency exercising State sovereignty, and Mr. Justice Cardozo in the dissenting opinion shows that the minority opinion was based upon the proposition that while a State was immune to bankruptcy, "not so a local governmental unit, though the State may have invested it with governmental powers."

Unless, therefore, the Ashton decision is to be set aside, the instant appeal involves no substantial Federal question.

The decision of this Court in Brush v. Commissioner of Internal Revenue, 300 U.S. 352, 57 Sup. Ct. 495, and the action of this Court in the case of Merced Irrigation Dis-

trict v. Bekins, — U. S. —, 58 Sup. Ct. 30, indicates that the review of the Ashton decision will not be entertained by this Court, and in consequence no substantial Federal question is presented.

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(3938)

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# In the Supreme Court

OF THE

## Anited States

OCTOBER TERM, 1937

THE UNITED STATES OF AMERICA,

Appellant,

V8.

MILO W. BEKINS and REED J. BEKINS, as
Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

No. 757

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

V8.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

No. 772

Appeals from the District Court of the United States for the Southern District of California.

## BRIEF FOR APPELLEES.

Due to the fact that the printed record has not been received by counsel and cannot be received in time to permit the filing of this brief seven days before the case is called for hearing, as required by the rules of this court, it is impossible to refer to the record. Permission to insert the page references after the brief is filed is requested. Only the galley proofs of the brief of United States have been received so that reference to page is impossible.

#### STATEMENT OF THE CASE.

Appellees are the owners of bonds of the Lindsay-Strathmore Irrigation District in the amount of one hundred fifty-six thousand (\$156,000.00) together with unpaid interest coupons from July 1, 1933, and interest upon the matured portion from the several dates of presentation to the district treasurer as provided in Section 52 of "the California Irrigation District Act". (Appendix.)

Prior to the filing of the petition in this cause the appellees on August 31, 1937, applied (R. 42...) to the Superior Court of the State of California in and for the County of Tulare for a writ of mandate to require the Supervisors of the County of Tulare to levy assessments upon the lands within the appellant district an required by Section 39 of the California Irrigation District Act (Appendix) to pay in full. the matured claims of the petitioners in said cause (appellees here) amounting to ninety thousand five hundred (\$90,500.00) dollars principal and interest coupons amounting to thirty-one thousand four hundred ninety-eight (\$31,498.00) dollars, which matured during the years 1933 to 1937 inclusive, representing that the board of directors of appellant district had failed during the years 1933, 1934, 1935 and 1936 to levy assessments sufficient for that purpose.

On August 31, 1937, the Superior Judge issued an alternative writ of mandate returnable September 13, 1937, requiring the Supervisors of Tulare County to prepare an assessment roll and lety the assessment as prayed for and as directed by Section 39b of the California Irrigation District Act. (Appendix.)

During the pendency of these proceedings and before final determination the U.S. District Judge on September 22, 1937, issued in the instant cause an "Order To Show Cause Why Injunction Should Not Issue And Why Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered" (R. 19) enjoining the appellees from further prosecution of its writ pending determination thereof by the district judge.

A "Return Of Certain Creditors Showing Cause Why An Injunction Should Not Issue And Why An Interlocutory Decree Making Plan Temporarily Operative Should Not Be Entered", was made by appellees thereto at the same time that the motion to dismiss was made. This return was made not only upon the grounds of the unconstitutionality of Chapter X, but upon the following additional grounds:

- (a) The injunction would interfere with the political and governmental powers of appellant district.
- (b) The insufficiency of the petition in bankruptcy,
- (c) The injunction would interfere with vested rights of the respondents and violate subsection C of Section 83, of the Bankruptcy Act: (See Appendix to brief of the United States.)
- (d) Because the obligations represented by appellees' bonds are obligations of the State of California payable through political and governmental procedure of the state effected through the Board of Supervisors.

At the time of the hearing appellees filed with the court as part of their proof of want of jurisdiction a certified copy of a "Judgment of Dismissal" entered in cause No. 4005. "In the Matter of Lindsay-Strathmore Irrigation District, an insolvent Taxing District" (R. 62), entered July 26, 1937, under Section 80 pursuant to the decision in Bekins v. Lindsay-Strathmore Irr. Dist., 88 Fed. (2d) 1004.

Upon the return, the order to show cause and temporary injunction was quashed by the district judge (R. 22.) and an appeal is here taken therefrom.

The motion to dismiss in addition to the constitutional questions, specified that the petition in bankruptcy (R. 22 and 24) was insufficient factually to give jurisdiction to the District Court because:

(a) Petitioner does not affirmatively appear to be insolvent or unable to pay its debts as they mature. Not only is there an absence of showing of insolvency, this being partly a question of law, since as hereinafter showed the state is the owner of all the property of the district, but indeed the petition affirmatively shows that the district is able to pay its debts as they mature for inasmuch as the district alleges that it did "in the year 1933, and in all years subsequent thereto apply to and obtain from the California District Securities Commission" the relief provided by Section 11. (Appendix.) Thereby the board of directors may annually determine with the approval of the commission the assessment which it will be reasonably possible for the lands in the district to pay.

(b) The petition shows upon its face that the Reconstruction Finance Corporation has made a loan to the district under Title 43, Section 403 U. S. C. which statute authorizes only loans to reduce or refinance irrigation district indebtedness. The Reconstruction Finance Corporation may make such loans only if satisfied that the district debt or a major portion thereof, will be reduced or refinanced. Having made the loan it has so determined; the Reconstruction Finance Corporation is not and can not acquire the bonds at their full face value; and the debt represented by the loan therefore is not affected by the plan.

### THE ACT OF CONGRESS.

Chapter X of the Bankruptcy Act was approved August 16, 1937. It adds Sections 81 to 84 to the Act and was passed after Chapter IX which was Sections 78 to 80 of the same Act, was held unconstitutional by this court in the Ashton case, hereinafter referred to.

There seem to be two primary purposes sought by Chapter X: First: to indicate, if that may be done, that an irrigation district and similar organizations are not governmental agents, and Secondly, to indicate by legislative direction, that in those cases where Reconstruction Finance Corporation has loaned money to a district and holds, in some capacity, a portion of the old securities of that district, that it is or may be deemed a creditor of the district to the

extent of the full face amount of such securities as it may hold.

On the first point it appears that there is no difference in the fundamental principles of the two acts. The most material changes being:

- (1) The new act does not make the consent of the state a requisite, and
- (2) It attempts to classify the several public agencies included as, "taxing agencies or instrumentalities" rather than "political subdivision".

The second change seems to be designed to enable districts that have already refinanced their indebtedness through loans from Reconstruction Finance Corporation to take advantage of the Act to force the minority bondholders to accept the plan adopted. For this purpose, Reconstruction Finance Corporation is to be regarded as the owner of the securities which it may have taken up by the loan, and thus be deemed affected by the plan.

It is to be doubted that this second purpose or change has been or can be accomplished.

Reconstruction Finance Corporation is authorized by the act which gave it life (Section 403, Title 43, U. S. C.), and which constitutes the charter of the corporation to loan money to an irrigation district to reduce or refinance the debt of the district and only where the corporation is satisfied that an agreement has been made between the district and the holders of its bonds, or other evidences of debt under which the district will be able to purchase or refund all or a major obligat would of law

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gation to the Reconstruction Finance Corporation ald not seem to be affected by the plan, as a matter law.

Further Section 83 (a) provides that the petiner can file its petition under the act if it is invent or unable to meet its debts as they mature. If
district has already refinanced through a loan
m Reconstruction Finance Corporation it would
m that the district is not insolvent or unable to pay
debts as they mature; unless the new obligation
Reconstruction Finance Corporation (not the old)
more than the district can pay.

Preditors owning 51% of the securities affected by plan must have accepted it in writing. If Reconuction Finance Corporation is not affected by the m, then under the act, the Reconstruction Finance reporation would hardly be in a position to condute to that percentage of acceptances.

The act provides further (not materially different om Chapter IX) for an injunction against prosecutcertain suits. It also provides that this cannot be newhere rights have become vested. (The return two (R. 2.6...) that appellees' bonds and coupons a been presented and under the provisions of Section 52 of the California Irrigation District Act (Appendix); had obtained a fixed status. That being so injunction would have issued, regardless of the astitutionality of the act, and the court's order ashing the order to show cause and denying the unction would be sustained.)

# BRIEF ANALYSIS OF THE CALIFORNIA IRRIGATION DISTRICT ACT AND RELATED LAWS.

The Wright Act was passed by California in 1887 and with minor changes remained until 1897, when it was rewritten as an entirely new law, which has since been known as "the California Irrigation District Act", Statutes 1897, page 254, as amended. Important parts of this act and related laws are set forth in the appendix.

To form a district, a petition is presented to the board of supervisors of the county by the landowners or electors residing in the proposed district. The supervisors, after hearing, forward a copy of the petition to the State Engineer, who determines the feasibility of the undertaking. After receiving his findings, the board of supervisors is authorized to conduct a hearing to determine the genuineness and sufficiency of the petition and other matters and to call an election of the qualified electors on the proposition.

The board of directors of the district is elected at popular election by qualified electors. The assessor, collector and treasurer are also independent elective officers. A director must be an elector and freeholder of the district. All officers are required to execute official bonds for the faithful performance of their duties, running in favor of the state.

Section 29 of the act provides that "the legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this act".

The directors may cause bonds to be issued and sold for the purpose of constructing or purchasing necessary irrigation canals, works, and the like. The matter must first, however, be submitted to the California Irrigation District Securities Commission, a state fiscal agency, for its approval. After approval of the commission an election is called and held upon the question.

Section 33 of the district act provides that the bonds and the interest thereon shall be paid from revenue derived from an annual assessment upon the lands within the district "and all the land within the district shall be and remain liable to be assessed for such payments".

Section 35 provides that the assessor must assess all the lands in the district, including city and town lots, "at its full cash value". Under this section all the lots and other lands in entire cities within irrigation districts are assessed for the bonds of the districts, although they receive perhaps no irrigation water. The assessments are equalized by the board of directors, sitting as a board of equalization.

Section 39 provides that the board of directors shall annually levy an assessment upon the lands within the district an amount sufficient to raise, among other purposes, the interest due or that will become due on all outstanding bonds of the district during the rest calendar year; also sufficient to pay the principal of

all bonds of the district that have matured or that will mature in the course of the next ensuing calendar year.

Section 39b provides that

"If as the result of the neglect or refusal of the board of directors to cause such assessment and levies to be made as in this act provided, then the duly equalized assessment made by the county assessor of the county \* \* \* shall be the basis of assessment for the district, and the board of supervisors of the county in which the office of the board of directors of said district is situated shall cause an assessment roll of said district to be prepared, and shall make the levy required by this act."

And this section further provides for the carrying out of the other functions in relation to the collection of the assessments by the county officers in event of default of the district officials.

Section 39c provides that the district attorney of the county shall see that these duties are performed, and upon his default the duty is cast upon the Attorney General of the State. This duty has been affirmed by the courts. (Selby v. Oakdale Irrigation District, 140 Cal. App. 171.)

Other sections of the act provide for the collection of the assessments and for sales of lands upon defaults.

Under Section 45 a certificate of sale is issued upon the sale for delinquent assessments. Section 47 provides that a redemption of property sold may be made within three years upon payment of the amount of the assessment with costs and penalties.

Section 48 provides for the issuance of a deed which provides that the deed conveys to the grantee the absolute title to the lands described free of all encumbrances.

It has been held that the liens of an irrigation district assessment and the liens for state, county, and city taxes are upon a parity. (Le Mesa, etc. Irrigation District v. Hornbeck, 216 Cal. 730.)

Section 52 of the act provides that "Upon presentation of any matured bond of the district, the treasurer shall pay the same from the bond principal fund, and upon presentation of any matured interest coupon of any bond of the district, the treasurer shall pay the same from the bond interest fund. If money is not available in the fund designated for the payment of any such matured bond or interest coupon, it shall draw interest at the rate of seven per cent per annum from the date of its presentation for payment until notice is given that funds are available for its payment, and it shall be stamped and provision made for its payment as in the case of a warrant for the payment of which funds are not available on its presentation " \* "."

#### DISSOLUTION OF IRRIGATION DISTRICTS.

Statutes 1903, page 3, provide for the voluntary dissolution of irrigation districts, and Statutes 1919, page 751, provide for the involuntary dissolution of irrigation districts.

Section 3 of this latter act provides that upon final judgment of dissolution the appropriate county officers shall act as ex officio officers of the district. The records belonging to the district shall be turned over to the proper county officers. "The county treasurer shall perform the duties of the district treasurer; the county tax collector shall perform the duties of the district tax collector; the county assessor shall perform the duties of the district assessor; the county clerk shall perform the duties of the secretary of the board of directors; the board of supervisors shall perform the duties of the board of directors; they shall proceed to levy and collect such additional taxes as may be necessary upon the lands embraced within such district in the same manner and with the same procedure for non-payment that county taxes are levied and collected for the purpose of paying such outstanding indebtedness not provided for by previous assessments. All property of every kind belonging to the district, including lands sold to the district for taxes, shall be sold as the court may direct and the proceeds' together with all money on hand shall be used to pay off the indebtedness. All funds remaining after all outstanding indebtedness has been paid shall be apportioned and be paid to the assessment pavers according to the last assessment roll."

#### THE DISTRICTS SECURITIES COMMISSION.

This commission consists of the attorney general, state engineer, superintendent of banks, and two others appointed by the Governor. It has some fiscal supervision over the affairs of the irrigation districts. This supervision is provided by Sections 30 to 32e of the California Irrigation District Act and by the provisions of the California Districts Securities Commission Act. (See Appendix.) These acts provide that the district must submit its plans to the Commission before the issuance of bonds, and for approval by the commission, including approval for the purpose of entitling the bonds to be certified by the State Controller as lawful investment for banks, trust funds, insurance companies, state school funds, and other like purposes.

Section 11 of this act provides that whenever any district has levied the annual assessment required and is in default on its bond obligations 20% or more, the district may become subject to the section and to the control of the commission, and thereafter continue subject to such control until it has gone out of default. Providing, further, that the "board of directors of such defaulting district, in levying the annual assessment of the district, may, notwithstanding Section 39 of the California Irrigation District Act or any other provision of law governing such district, levy only for such total amount as in their judgment by a finding of fact, approved by the commission it will be reasonably possible for the lands in said district. taken as a whole, to pay without exceeding a delinquency of fifteen per cent. In determining the amount it is possible for the lands to pay, at the time of each annual assessment, the board of directors shall consider the productivity of lands in the district, crops growing and to be grown during the year, market conditions, as well as they can be forecast, the cost of producing and marketing crops, and obligations of the land respecting taxes and public liens".

## SUMMARY OF ARGUMENT.

## Point A:

The bankruptcy power of Congress does not extend to the states or to their governmental instrumentalities under Sec. 8, Art. 1 C. 4 of the Constitution.

- 1. A California irrigation district is a state governmental instrumentality performing essential governmental functions and is thus a governmental agent of the state and partakes of the sovereignty of the state. As such it lies as far beyond the bankruptcy power of Congress as does the state itself.
- 2. Since the bankruptcy clause is framed in general language it falls squarely within the rule that general statutory language does not apply to the sovereign to its disadvantage and thus the state and its agencies are presumed to be exempt from the bankruptcy power.
- 3. The federal tax clause of the Constitution is in the same section as the bankruptcy clause. They are both stated in general language. It is settled that the United States is prohibited by necessary implication from taxing the state and its governmental

agencies and instrumentalities because a tax would tend to injure and possibly destroy the state. Since a bankruptcy act applied to the state or its agents would tend to injure and if carried to an extreme could destroy the state, the same rule of construction applied to the bankruptcy power must necessarily result in its denial.

- 4. The new Chapter X of the Bankruptcy Act seems even more vulnerable to constitutional objections than was Chapter IX; primarily in that Chapter X purports to authorize the taxing agency to avail itself of the act without the consent or even over the objection of the parent state.
- 5. In any event, Chapter X does not seem to have met the main constitutional objections that were made to Chapter IX and unless Ashton v. Cameron County Water Improvement District No. 1 is to be overruled it seems that this act must be held to be without the power of Congress. Since the Ashton case was well considered and has, in effect, been followed, it is not supposed that it will be overruled.

## Point B:

The bankruptcy power is subject to the Fifth

# Point C:

Even if the act were constitutional the court in this proceeding did not have jurisdiction, under the allegations of the petition.

# Point D:

The cause is res judicata.

#### ARGUMENT.

POINT A. THE BANKRUPTCY POWER OF CONGRESS DOES NOT EXTEND TO THE STATES OR TO THEIR GOVERNMENTAL INSTRUMENTALITIES.

Sections 81 to 84 of the Bankruptcy Act, as added by the Act of Congress August 16, 1937, are not authorized by clause 4, Section 8, Article I of the Constitution, and are prohibited by the Tenth Amendment, and by the inherent nature of dual sovereignty.

 A CALIFORNIA IRRIGATION DISTRICT IS A STATE GOVERN-MENTAL INSTRUMENTALITY PERFORMING ESSENTIAL GOV-ERNMENTAL PUNCTIONS.

Article XIV, Section 1, California Constitution, provides that "the use of all water \* \* is hereby declared to be a public use, and subject to the regulation and control of the state."

Section 3 of the same Article declares, "It is hereby declared that because of the conditions prevailing in this state, the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable."

Article XI, Section 13, of the California Constitution provides:

"The Legislature shall not delegate to any special commission, private corporation, company, association or individual any power to make, control, appropriate, supervise or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever, except that the Legislature shall have power to provide for the supervision, regulation

and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts, organized or existing under any law of this State."

By the provisions of Statutes 1911, page 1407, of the State of California, "irrigation in the State of California is hereby declared to be a public necessity and public use, and the power of eminent domain may be exercised on behalf of such public use."

Stats. 1937, Chapter 24. As late as 1937 the legislature of California in an act somewhat like Chapter X here under consideration made a legislative declaration of the nature of an irrigation in the following words:

Sec. 1. "That such inevitable and wholesale conditions of default will destroy the ability of such districts (irrigation) to pay their bonded debts in whole or in part and to carry out the necessary public functions with which they are entrusted as governmental agencies of the state."

# (a) Political and governmental features of the district.

The political and governmental features of the district are further shown by the method of organization and government. The petitioners must be landowners of electors; the *supervisors* and the *state engineer* must pass upon it, and it must be finally accepted by vote of the *electors*. Furthermore, the officers of the district are elected by the electors; they each execute an oath of office, give a bond to the state, and are subject to recall as other elective officers. The district has the power of taxation, the power to issue bonds and

borrow money, and the power of eminent domain. The bonds of the district are to be approved by a state commission. The property of the district is, in effect, the property of the state and is exempt from taxation by other municipal agencies. Its officers are public officers, and its affairs are under the control of the Legislature. Upon dissolution the duties of its officers are performed by county officers, and in default of the performance of its duties of assessment and collection of taxes, the officers of the county are required to perform them, duties which may be compelled by the district attorney of the county and the attorney general of the state.

In

In Re Madera Irr. District, 92 Cal. 296, 321, the court said:

"That an irrigation district organized under the act in question becomes a public corporation is evident from an examination of the mode of its organization, the purpose for which it is organized, and the powers conferred upon it. It can be organized only at the instance of the board of supervisors of the county,—the legislative body of one of the constitutional subdivisions of the state; its organization can be affected only upon the vote of the qualified electors within its boundaries; its officers are chosen under the sanction and with the formalities required at all public elections in the state,—the officers of such election being required to act under the sanction of an oath, and being authorized to administer oaths when required, for the purpose of conducting the election; and the officers, when elected, being required to execute official bonds

to the state of California, approved by a judge of the superior court. The district officers thus become public officers of the state. When organized, the district can acquire, either by purchase or condemnation, all property necessary for the construction of its works, and may construct thereon canals, and other irrigation improvements, and all the property so acquired is to be held by the district in trust, and is dedicated for the use and purposes set forth in the act, and is declared to be a public use, subject to the regulation and control of the state. For the purpose of meeting the cost of acquiring this property, the district is authorized, upon the vote of a.majority of its electors, to issue its bonds, and these bonds and the interest thereon are to be paid by revenues derived under the power of taxation, and for which all the real property in the district is to be assessed. Under this power of taxation. -one of the highest attributes of sovereignty,—the title of the delinquent owner to the real estate assessed, may be divested by sale, \* \* Here are found the essential elements of a public corporation, none of which pertain to a private corporation. The property held by the corporation is in trust for the public, and subject to the control of the state. Its officers are public officers, chosen by the electors of the district, and invested with public duties. Its object is for the good of the public, and to promote the prosperity and welfare of the public. 'Where a corporation is composed exclusively of officers of the government, having no personal interest in it, or with its concerns, and only acting as organs of the state in effecting a great public improvement, it is a public corporation.' (Ang. & A. Corp. Sec. 32.) 'A municipal corporation proper is created mainly

for the interest, advantage, and convenience of the locality of its people. The primary idea is an agency to regulate and administer the interior concerns of the locality in matters peculiar to the place incorporated, and not common to the state or people at large.' (15 Amer. & Eng. Enc. Law, p. 954.) 'Public corporations are such as are created for the discharge of public duties in the administration of civil government.' (Lawson, Rights & Rem. Sec. 332.)" (Italics ours.)

In

Bolton v. Terra Bella Irr. Dist., 106 Cal. App. 313, 316

(hearing by Supreme Court denied), the court stated:

"" \* \* The county is an agency of the state
for performing certain functions of government.

The legislature has likewise provided for, and
authorized, irrigation districts to carry out another function of government. \* \* \*."

In

Woody v. Security Trust & Savings Bank, 137 Cal. App. 29, 35,

(hearing by Supreme Court denied), the court said:

"\* \* An irrigation district possesses governmental functions and is a creature of law which
can only be brought into being under the direct
authority of the state. \* \* \*"

In

Swampland etc. Dist. No. 341 v. Blumenberg, 156 Cal. 532, 537,

the court said:

"" \* a levy for such purposes, by a district which has completed its permanent system of

ditches, a district, which though not a municipal corporation, is at least a public corporation performing some of the functions of government for the local territory interested, bears a close resemblance to ordinary taxes levied to defray the expenses of a city or county. \* \* \* \*"

In

Miller & Lux v. Board of Supervisors, 189 Cal. 254, 263,

the court said:

"\* \* In the opinion in the Madera District case the irrigation district was treated as a public corporation to be invested with certain political duties to be exercised in behalf of the state. \* \* \*"

In

Fallbrook Irr. District v. Bradley, 164 U. S. 112, 174,

this court said:

"The formation of one of these irrigation districts amounts to the creation of a public corporation, and their officers are public officers. \* \* \*"

In

Meriweather v. Garrett, 102 U. S. 472, 515, this Court said:

"The levying of taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, to be performed only by the Legislature upon consideration of policy, necessity, and public welfare. \* \* \* This power to impose burdens and raise money is the highest attribute of sovereignty, \* \* \* Especially is it beyond the power of the federal judiciary to assume the place of a state in the exercise of this authority at once so delicate and so important."

It has been consistently held by this Court from the beginning that these districts created under the elaborate scheme devised for their organization and operation by the Legislature are public agencies for the promotion of a public purpose.

In the case of

Yolo v. Modesto Irr. District, 216 Cal. 274, 276, the court held the district liable in tort in connection with the sale and delivery of electricity outside the district boundaries, but as to the usual functions of the district the court said that these districts are not generally liable for torts of their agents because they are held to be state agencies performing governmental functions.

In

O'Neill v. Leamer, 239 U. S. 244, this Court, quoting from the Supreme Court of Nebraska, said:

In our opinion, it is too late in the day to contend that the irrigation of arid land, the straightening and improvement of water courses, the building of levees, and the drainage of swamp and overflowed lands for the improvement of the health and comfort of the community, and the reclamation of waste places and the promotion of agriculture, are not all and every of them subjects of the general and public concern, the promotion and regulation of which are among the most important of governmental powers, duties and functions.

It was stated in

Lane County v. Oregon, 7 Wallace (U.S.) 71: "Now, to the existence of the States, themselves

necessary to the existence of the United States, the power of taxation is indispensable. It is an essential function of government."

In

Houck v. Little River Drainage District, 239 U. S. 254, 261,

the then Mr. Justice Hughes, speaking for the Court, said:

"It was constituted a political subdivision of the state for the purpose of performing prescribed functions of government."

In the case of

Brush v. Commissioner of Internal Revenue, 300 U. S. 352, 362,

this Court said:

"For present purposes, however, we shall inquire whether the activity here in question constitutes an essential governmental function within the proper meaning of that term; and in that view decide the case."

Saying further (p. 364):

"" \* our decision in the Indian Motorcycle
Co. case did not rest in the slightest degree upon a
consideration of the state rule in respect of tort
actions, but upon a broad consideration of the
implied constitutional immunity arising from the
dual character of our national and state governments.

"The rule in respect of municipal liability in tort is a local matter; \* \* \*"

And:

"\* \* So long as our present dual form of government endures, the states, it must never be forgotten, 'are as independent of the general government as that government within its sphere is independent of the States.' The Collector v. Day, 11 Wall. 113, 124, 20 L. Ed. 122."

"One of the most striking illustrations of the public interest in the use of water and the governmental power to deal with it is shown in legislation and judicial pronouncement with respect to the arid-land states of the far west. In some of them the State Constitution asserts public ownership of all unappropriated nonnavigable waters. \* \* \* Clark v. Nash, 198 U. S. 361, 25 S. Ct. 676, 49 L. Ed. 1085, 4 Ann. Cas. 1171. We said that what is a public use may depend upon the facts surrounding the subject; pointed out the vital need of water for irrigation in the arid-land states, a need which did not exist in the states of the east and where, consequently, a different rule obtained; and held that the court must recognize the difference of climate and soil which rendered necessary differing laws in the two groups of states."

In the case of

Union Trust Co. v. State, 154 Cal. 716, 729, the California Supreme Court said:

"All public corporations exercising governmental functions within a limited portion of the state—counties, cities, towns, reclamation districts, irrigation districts—are agencies of the state, just as the board of works created by this act is such agency."

In the case of

Moody v. Provident Irr. District, 92 C. A. D. 574,

decided March 11, 1937, and which is the latest expression of the California courts upon this subject, Mr. Justice Plummer said:

"It is settled law that an irrigation district is a governmental agency."

2. IT IS A WELL RECOGNIZED PRINCIPLE OF CONSTRUCTION THAT GENERAL STATUTORY LANGUAGE DOES NOT APPLY TO THE SOVEREIGN TO ITS DISADVANTAGE.

In

Reclamation Dist. No. 551 v. County of Sacramento, 134 Cal. 477, 480,

it is said:

"The principle of construction was stated in Mayrhofer v. Board of Education, 89 Cal. 110, to be, 'that the state is not bound by general words in a statute which would operate to trench upon its sovereign rights, injuriously affect its capacity to perform its functions, or establish a right of action against it'."

In

City of Pasadena v. Chamberlain, 1 Cal. App. (2d) 125,

the court stated:

"The charter is subject to the rule of legislative interpretation that 'the state and its agencies are not bound by general words limiting the rights and interests of its citizens' unless included expressly or by necessary implication. (Kubach v. McGuire, 199 Cal. 215.) \* \* \*". (Italics supplied.)

In

Skelly v. Westminster School Dist., 103 Cal. 652, 656,

the court was considering a mechanic's lien law, and said:

"The language is general, and in its usual sense would include a schoolhouse, for that is a building and a structure. But it was held that the statute did not apply to public buildings. The rule is that the state is not bound by general words in a statute which would operate to trench upon its sovereign rights, or injuriously affect its capacity to perform its functions or establish a right against it."

In

City of Inglewood v. County of Los Angeles, 207 Cal. 697, 707,

the court said:

"But it is well settled that the state and its subordinate agencies, including municipal corporations, are not bound by general words used in the statute." (Italics ours.)

In

Liebman v. Richmond, 103 Cal. App. 354, 359, the court said:

"It is settled law that in the absence of express, words to the contrary the state is not included within the general terms of a statute."

This proposition has likewise been well established by the Federal courts. In the case of

Guarantee Title & Trust Co. v. Title Guaranty and Surety Co., 224 U. S. 152, 155, 56 L. Ed. 706, 708,

the Court was considering a bankruptcy case where it was claimed that the United States was bound as a creditor in a bankruptcy proceeding and where the question here under consideration became involved, the Court reviewed authorities and quoted with approval from

United States v. Herron, 20 Wall. 251, 260, 22 L. Ed. 275, 278,

and said:

"The decision was expressly put upon the ground 'that the sovereign authority of the country is not bound by the words of a statute unless named therein, if the statute tends to restrain or diminish the powers, rights, or interests of the sovereign.' There was much reasoning to sustain the proposition, and it was especially applied to discharges in bankruptcy. Expressing the general assent to the proposition announced, the court said (page 262):

'Greater unanimity of decision in the courts or of views among text writers can hardly be found upon any important question than exists in respect to this question in the parent country, nor is there any diversity of sentiment in our courts, Federal or State, nor among the text writers of this country.'" In

United States v. Thompson, 98 U. S. 486, 489, 490, 25 L. Ed. 194, 195,

## the court said:

"Limitations derive their authority from statutes. The King was held never to be included, unless expressly named. No laches was imputable to him. These exemptions were founded upon considerations of public policy.

When the Colonies achieved their independence, each one took these prerogatives, which had belonged to the Crown; and when the National Constitution was adopted, they were imparted to the new government as incidents of the sovereignty thus created. It is an exception equally applicable to all governments. \* \* \*"

In

Marshall v. New York, 254 U. S. 380, 382, 65 L. Ed. 315, 317,

# the Court said:

"At common law the crown of Great Britain, by virtue of a prerogative right, had priority over all subjects for the payment out of a debtor's property of all debts due it. The priority was effective alike whether the property remained in the hands of the debtor, or had been placed in the possession of a third person, or was in custodia legis. \* \* The first constitution of the state of New York (adopted in 1777) provided that the common law of England, which, together with the statutes constituted the law of the colony on April 19, 1775, should be and continue the law of the state, subject to such alterations as its legisla-

ture might thereafter make. This provision was embodied, in substance, in the later constitutions. The courts of New York decided that, by virtue of this constitutional provision, the state, as sovereign, succeeded to the crown's prerogative right of priority.

This priority arose and exists independently of any statute. The legislature has never, in terms, limited its scope; and the courts have rejected as unsound every contention made that some statute before them for construction had, by implication, effected a repeal or abridgment of the priority.

Whether the priority enjoyed by the state of New York is a prerogative right or merely a rule of administration is a matter of local law. Being such, the decisions of the highest court of the state as to the existence of the right and its incidents, will be accepted by this court as conclusive. \* \* \* The priority of the state extends to all property of the debtor within its borders, whether the debtor be a resident or a nonresident, and whether the property be in his possession or in custodia legis. The priority is, therefore, enforceable against the property in the hands of a receiver appointed by a Federal court within the state. \* \* \*"

This rule was recognized in the Colonies and passed on from the Colonies to the new states. As we will see, when a new state is admitted to the Union, it comes into the Union on an equal footing with the original states in all respects. The sovereignty being reserved to the state, all of the states possess prerogatives of a sovereign, one of which is that the sovereign is not bound by general language which works to his disadvantage. Since a bankruptcy law which would subject the fiscal affairs of the state to an involuntary proceeding would not only be to the disadvantage of the sovereign state, but could actually destroy the independence of the state, it is impossible to conceive that the states, or the people in their sovereign capacity, intended, by the general language of the bankruptcy clause, that the independence of the states should thus be put in jeopardy.

In

Coyle v. Smith, 221 U. S. 559, 567, 55 L. Ed. 853,

the Court said:

"'This Union' was and is a union of states, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself."

In

Buffington v. Day, 11 Wall. 113, 126, 20 L. Ed. 122, 126,

the Court said:

"We do not say the mere circumstance of the establishment of the judicial department, and the appointment of officers to administer the laws, being among the reserved powers of the state, disables the general government from levying the tax, as that depends upon the express power 'to lay and collect taxes,' but it shows that

it is an original inherent power never parted with, and, in respect to which, the supremacy of that government does not exist, and is of no importance in determining the question; and further, that being an original and reserved power, and the judicial officers appointed under it being a means or instrumentality employed to carry it into effect, the right and necessity of its unimpaired exercise, and the exemption of the officer from taxation by the general government stands upon as solid a ground, and are maintained by principles and reasons as cogent as those which led to the exemption of the Federal officer in Dobbins v. Erie Canal Co. (supra), from taxation by the state; for, in this respect, that is, in respect to the reserved powers, the state is as sovereign and independent as the general government." (Italics supplied.)

The Buffington case is without doubt the leading authority upon the subject of the right of the United States to tax an agency of the state, and it is interesting to note that the court uses the strong language used in the Buffington decision regarding the right of the United States to tax an officer of the state, notwithstanding the constitutional provision: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises \* \* \*." (Art. I, Sec. 8, Cl. 1.)

If Congress has power to apply a bankruptcy statute to an agency or political subdivision of the state, it also has the power to apply a bankruptcy statute to the state itself.

The state itself is a considerable borrower. State bonds are issued for all manner of public purposes. It is not unusual to find the state capitol constructed with funds borrowed upon a bond issue, and from that purpose down through the long category of state activities. Practically all state demands are paid by warrants or other evidence of indebtedness. If Congress has the power to enact a bankruptcy statute that will apply to an agency of the state—an arm—a department of the state—then there is no doubt but that Congress can likewise enact a bankruptcy statute that will apply to all of the fiscal affairs of the state itself. The fact that Congress has not exercised its full power and might not do so is no derogation of the power itself. If Congress can do what it has attempted to do by Section 81, then it can go all of the way. If it has the power, no one can be heard to complain against the exercise of that power. We maintain that Congress does not have the power, and in the very nature of things could not have the power. The nation, being sovereign in its field, and the state, being sovereign in its field, neither can exercise a power over the other that is not expressly given or reserved to the one attempting to exercise the power, or necessarily implied. The bankruptcy clause, being in general language, it is inconceivable that the independent sovereign state or the people intended that the sovereign could, through a bankruptcy statute, enacted under this general language, be subject to a federal court of bankruptcy and have a receiver in bankruptcy put in charge of the fiscal affairs of the state.

- 3. THE SAME PRINCIPLES WHICH DECLARE THE BONDS OF STATE INSTRUMENTALITIES TO BE EXEMPT FROM PEDERAL TAXATION MAKE THEM ALSO EXEMPT FROM NATIONAL BANKRUPTCY LEGISLATION.
- (a) The origin of the exemption of state and municipal bonds from taxation by the United States.

The Constitution of the United States contains no provision expressly providing that Congress shall have no power to levy taxes upon municipal bonds or the income derived therefrom.

At the close of the American Revolution the thirteen colonies suddenly found themselves to be thirteen sovereign states or nations, all jealous and fearful of each other. The necessities of the situation, however, made cooperation among them for their mutual defense imperative, but they did not conceive themselves to be one nation, and for a time had no intention of uniting to form one nation.

The representatives of no state at the convention, which drafted the Constitution, had the slightest intention of surrendering the sovereignty of their state to any new government, and, yet, it was necessary to vest in the new government the attributes of sovereignty. The result was a compromise. The states delegated to the federal government some of their sovereign powers, but reserved all others to themselves.

The first cases to come before the courts involved attempts upon the part of the states to encroach upon the sovereignty of the federal government. At that time the great danger was that the states would destroy the federal government, by constant en-

croachment upon its delegated powers, and the first case which came before the Supreme Court of the United States, involving the principle under discussion, was McCulloch v. Maryland, 4 Wheat. 316, in which a state attempted to impose a tax upon an instrumentality of the Federal Government. In that case Mr. Chief Justice Marshall pointed out that, if the states possessed the power to tax the federal government, or the means or instrumentalities through which it exercised its constitutional powers, the federal government would be subordinated to the states. He declared the power to tax was the power to destroy, and that if it were conceded that the states possessed the power to tax the federal government, or its governmental instrumentalities, they could impede, if not destroy, that government.

This principle was first applied to the taxation of bonds in the case of Weston v. Charleston, 2 Pet. 449 (January, 1829), in which the Supreme Court of the United States held that an ordinance of the City of Charleston, South Carolina, attempting to tax securities issued by the United States, was unconstitutional. The court held that the bonds represented the exercise of a power vested in the United States by the Constitution.

It is, therefore, a necessary corollary to the decisions in *McCulloch v. Maryland* and *Weston v. Charleston*, that the United States cannot tax the states or its instrumentalities of government. Accordingly we find this Court holding in *Collector v. Day*, 11 Wall. 113, that Congress has no power to

impose a tax upon the salary of a judicial officer of a state; in *United States v. Railroad*, 17 Wall. 322, that the United States cannot levy taxes upon the revenues of a municipal corporation of a state, and in

Mercantile Bank v. New York, 121 U. S. 138, 162,

the Supreme Court said:

"Bonds issued by the State of New York, or under its authority by its public municipal bodies, are means for carrying on the work of the government, and are not taxable even by the United States, \* \* \*"

(b) The income derived from state and municipal bonds is likewise exempt from taxation by the United States.

In

Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 158 U. S. 601,

the Court said:

"We think the same want of power to tax the property or revenues of the States or their instrumentalities exists in relation to a tax on the income from their securities. \* \* \* it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution."

The decision in *Pollock v. Farmers' Loan & Trust Co.*, resulted in the Sixteenth Amendment. That amendment reads as follows:

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The first case which clearly indicated the court's interpretation was Evans v. Gore, 253 U.S. 245.

In National Life Insurance Co. v. United States, 277 U. S. 508, it was expressly held that the Revenue Act of 1921, in so far as it attempted to levy a tax upon the income derived from state and municipal bonds, was unconstitutional.

More recently in

Willcuts v. Bunn, 282 U. S. 216,

Mr. Chief Justice Hughes, speaking for the Court, said:

"And a tax upon the obligations of a State or of its political subdivisions falls within the constitutional prohibition as a tax upon the exercise of the borrowing power of the State."

Mr. Justice Stone, in

Educational Films Corp. v. Ward, 282 U. S. 379,

declared that

"\* \* This court since McCulloch v. Maryland, 4 Wheat. 316, has consistently held that the instrumentalities of either government, or the income derived from them, may not be made the direct object of taxation by the other. \* \* \*"

(c) Regardless of whether the enterprise in which the agency is engaged may be deemed governmental or proprietary, the power to borrow money is a governmental function.

The cases of:

South Carolina v. United States, 199 U.S. 437; Ohio v. Helvering, 292 U.S. 360;

Helvering v. Powers, 293 U.S. 214,

are none of them cases involving the taxation of state or municipal bonds. The power to tax the properties of an agent employed by a state or the federal government as distinguished from taxation of its operation has long been recognized by the courts. The South Carolina and Ohio cases involved undertakings by the states of enterprises that were then subject to federal taxation. Taxation of enterprises or properties is not the same as taxation of means employed by the state to raise revenues to establish such enterprises. The operation of an enterprise may or may not be an enterprise of a strictly governmental function, but the raising of revenue is the most essential of all governmental functions. Without such power governments could not exist. So in

Farmers & M. Sav. Bank v. Minnesota, 232 U. S. 516, 526,

the Court said:

"We deem it entirely clear that a tax upon the exercise of the function of issuing municipal bonds is a tax upon the operations of the government, and not in any sense a tax upon the property of the municipality."

When a state creates a public agency of any character, such agency is created for the purpose of con-

ducting business. All its powers are delegated powers of the state.

In

Railroad Co. v. Peniston, 18 Wall. 5, 36, it was said:

"It is, therefore, manifest that exemption of federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but on the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. \* \* \* a tax upon their operations is a direct obstruction to the exercise of federal powers."

In

James v. Dravo Contracting Co., ......U. S......., 58 Sup. Ct. Rep. 208, 216, 218, 219, 82 L. Ed. Adv. Op. 125,

Mr. Chief Justice Hughes said, referring to the doctrine of immunity:

"We said \* \* \* \* the power to tax is no less essential than the power to borrow money'."

# And further:

"That doctrine recognizes the direct effect of a tax which 'would operate on the power to borrow before it is exercised' (Pollock v. Farmers Loan & Trust Co., supra), and which would directly affect the government's obligation as a continuing security. Vital considerations are there involved respecting the permanent relations of the government to investors in its securities and its ability to maintain its credit; \* \* \* (Italics ours.)

# And further:

"And it was on that principle that 'any taxation by one government of the salary of an officer of the other, or the public securities of the other, or an agency created and controlled by the other, exclusively to enable it to perform a governmental function', was prohibited."

#### See also:

Perry v. United States, 294 U. S. 330; Ohio Life Ins. Co. v. Debolt, 16 How. 416; Willcuts v. Bunn, 282 U. S. 216, Weston v. City Council of Charleston, 2 Peters (U. S.) 449.

The bankruptcy clause of the Constitution conferring upon Congress the power to establish uniform laws on the subject of bankruptcies clearly expresses no greater breadth than the language of the Sixteenth Amendment.

- 4. THE NEW CHAPTER X OF THE BANKEUPTCY ACT IS EVEN MORE VULNERABLE TO THE CHARGE OF UNCONSTITUTION-ALITY THAN WAS THE OLD.
- (a) Chapter IX classified irrigation districts as political subdivisions of the state. The new act classifies them to be taxing agencies or instrumentalities.

The difference in attempted classification does not effect any change in the nature and functions of irrigation districts. They are, as shown above, state instrumentalities exercising essential governmental functions.

(b) The old act provided that the petition could be filed if the state consented.

'Under the new act apparently the petition can be filed even though the parent state objects.'

The new act is thus in that respect an involuntary proceeding in so far as the parens patriae is concerned. It is not admitted, however, that state consent would validate the act. It is clear that no act of the state will enlarge the power of Congress.

Both the majority and minority opinions in the case of

Ashton v. Cameron County Water Imp. Dist. No. 1, 298 U. S. 513, 56 Sup. Ct. 892,

admit that Congress does not have the power to impose involuntary bankruptcy upon a state agency.

"" \* a State may voluntarily consent to be sued; \* \* But nothing in this tends to support the view that the federal government, acting under the bankruptcy clause, may impose its will and impair state powers \* \* \*"

Mr. Justice Cardozo, delivering the opinion of the minority, said:

"The question is not here whether the statute would be valid if it made provision for involuntary bankruptcy, dispensing with the consent of the state and with that of the bankrupt subdivision. For present purposes one may assume that there would be in such conditions a dislocation of that balance between the powers of the states and the powers of the central government which is essential to our federal system. Cf. Hopkins Federal Savings & Loan Assn. v. Cleary,

296 U. S. 315, 56 Sup. Ct. 235, 80 L. Ed. 251; United States v. California, 297 U. S. 175, 56 S. Ct. 421."

"" \* " the petition must be accompanied by the written approval of the state, whenever such consent is necessary by virtue of the local law."

5. THE ATTOBNEY GENERAL OF THE UNITED STATES, IN HIS OFFICIAL OPINIONS, AGREES THAT BANKEUPTCY CANNOT EXTEND TO A STATE INSTRUMENTALITY.

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Honorable Homer Cummings, Attorney General of the United States, in an opinion dated February 4, 1937, being Vol. 38, Op. No. 72, an opinion directed to the Secretary of the Treasury, had under consideration a request for re-consideration of the opinion of the Attorney General dated January 30, 1914, in which the Attorney General had held that special assessment districts lawfully created for public purposes and authorized to exercise a portion of the sovereign powers of the states are "political subdivisions" within the meaning of the Revenue Act of 1913. The occasion for the review was the question whether the sale of gasoline by a producer to an irrigation district in the State of California is subject to excise tax imposed by the Revenue Act of 1932, as amended, and the answer apparently turned upon the question whether the irrigation district is a political subdivision of the state, the act exempting sale of any article "for the exclusive use of the United States, any State, Territory of the United States, or any political subdivisions of the foregoing".

The most important part of this opinion in this connection is that part in which the Attorney General said:

"It must be observed at the outset that instrumentalities of a state legally employed as a means of executing its sovereign powers are immune from Federal taxation under the constitutional principle recognized since the decision of the United States Supreme Court in Mc-Culloch v. Maryland, 4 Wheat. 316."

Furthermore, in an opinion dated April 21, 1933, furnished to Honorable Hatton W. Sumners, Chairman of the House Judiciary Committee, the Attorney General of the United States in an opinion signed by Charles H. Weston, special assistant, expressed himself in the following manner with relation to the proposed municipal bankruptcy bill (H. R. 3083), which was eventually enacted as Chapter IX of the Bankruptcy Act:

"Assuming that Congress cannot, even with State consent, enact a bankruptcy law applicable to a State, it does not follow that the power of Congress is equally limited in the case of municipalities. Municipal corporations are of a dual character. They exercise both 'powers which are governmental and powers which are of a private or business character', and in the latter capacity the municipality 'is a mere legal entity or juristic person'."

"In my opinion the private or proprietary capacity of a municipality is sufficiently distinct

and definite to bring it within the purview of the bankruptcy power of Congress where the State, as the representative of the municipality's governmental functions, has given its consent."

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(It should here be noted that the Attorney General's opinion is limited to instances in which the state has given its consent.)

The Attorney General then goes on in his opinion to state that he concludes that bankruptcy relief in its nature is not inapplicable to municipalities. Then calls attention to established constitutional principle that the United States and its governmental instrumentalities are free from taxation by the states "and that the States and their governmental instrumentalities are likewise free from taxation by the United States". Citing

Indian Motorcycle Co. v. United States, 283U. S. 570, 575.

This plan, he holds, is implied from the necessity of maintaining our dual system of government, and says:

"Congress cannot regulate, directly or indirectly, the fiscal policies of the State or their governmental agencies."

From this also the Attorney General concludes that "the authority of a municipality to file a petition under a Federal bankruptcy act must be derived from State law and that the mere fact that the State has not prohibited such action is not sufficient".

The Attorney General further holds that,

"Neither the United States nor the States may abdicate essential powers, of government or delegate them to another sovereign."

Thus it is his conclusion that a state may authorize a municipality to file a bankruptcy petition if it does not interfere with the municipality's governmental functions.

The Attorney General then defines what he means by a municipal corporation as "the body politic and corporate constituted by the incorporation of inhabitants of a city or town for the purposes of local government thereof", and distinguishes such municipal corporation from a public or quasi corporation "the principal purpose of whose creation is as an instrumentality of the State". He then points out that a "public or quasi corporation, such as a county or school or water district, is 'but an instrumentality of the State', incorporated by the State".

The Attorney General points out that powers uniformly differ between municipal corporations and public corporations, on which latter he cites Dillon, Municipal Corporations, 5th Ed., describing them as mere auxiliaries of the state, and says that since many political subdivisions are merely departments or branches of the state government, it seems necessary, to express an opinion upon the power of Congress to enact a bankruptcy law applicable to the states themselves, and says that it seems foreign to the conception of bankruptcy to extend its remedies

and the jurisdiction of its courts to a purely governmental body.

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"It was never supposed that the sovereign itself could adjust its own debts through the medium of the bankruptcy court. For the United States to provide such relief for the states would seem, under our dual system of government, equally beyond the scope of bankruptcy legislation. It would, therefore, seem that Congress could bring within the scope of its bankruptcy legislation only private debtors and those other corporate bodies which, although they exercise by delegation certain governmental functions, also have a definite private or proprietary capacity." \*

In my opinion the Constitution did not mean to permit Congress, through the medium of bankruptcy laws, to break down the boundaries between Federal and State power even if the States gave their consent."

The Attorney General's conclusion is, therefore:

"It is beyond the power of Congress, even with State consent, to enact any bankruptcy law which is applicable to the States themselves or to political subdivisions which are merely departments or branches of the State government."

6. THE PROHIBITION IN THE ACT AGAINST ANY DECREE OR ORDER OF THE COURT INTERPERING WITH THE GOVERNMENTAL OR POLITICAL POWERS OF THE STATE OR ITS AGENCY ITSELF PROHIBITS THE APPLICATION OF THIS ACT TO THE BONDS OF APPELLEES.

In this particular connection reference is made to the alternative writ of mandate issued by the Superior Court of the State of California, in and for Tulare County, directed to the board of supervisors of the County of Tulare, directing the board to levy assessments upon certain lands for the purpose of paying the past due bonds and coupons of the appellees.

Whatever view may be taken of the general nature of a California irrigation district, and whatever view may be taken of the public or private character of the functions of the district in relation to distribution of the waters of the state, no other view can be taken of the control of the state over its public officers in the exercise of the sovereign right of the levy of taxes and assessments than that these are essentially political and governmental functions of the state itself.

# 7. THE ASHTON CASE IS CONTROLLING AND WILL NOT BE DISTURBED.

We have seen that the essential features of the new Chapter X of the Bankruptcy Act is not dissimilar to Chapter IX, held by this Court in the Ashton case to be unconstitutional. The same principles that were involved in the Ashton case are involved here. Indeed, any new principles that may be involved here seem to be of minor and certainly not of controlling consequences.

The Ashton case was rather well presented. The case was not only argued by able counsel but a rather formidable list of briefs were presented by the parties and by other interested persons including bondholders, irrigation districts, Reconstruction Finance Cor-

poration and the Attorneys General of a group of states. After full consideration this Court said (298 U. S. 513, 527):

"" " " The evident intent was to authorize a federal court to require objecting creditors to accept an offer by a public corporation to compromise, scale down, or repudiate its indebtedness without the surrender of any property whatsoever. " " " It is plain enough that respondent is a political subdivision of the state, created for the local exercise of her sovereign powers, and that the right to borrow money is essential to its operation. " " " (p. 528.) Its fiscal affairs are those of the state, not subject to control or interference by the national government, unless the right so to do is definitely accorded by the Federal Constitution."

The Court quotes Mr. Chief Justice Chase in

Texas v. White, 7 Wall. 700, 725, 19 L. Ed. 227:

"\* \* \* the preservation of the States, and the
maintenance of their governments, are as much
within the design and care of the Constitution
as the preservation of the Union and the maintenance of the National government."

The Court cites

Collector v. Day, 11 Wall. 113, 125, and
Indian Motorcycle Company v. United States,
283 U. S. 570, 575, et seq., 51 S. Ct. 601,
and said:

(p. 529): "Notwithstanding the broad grant of power 'to lay and collect taxes', opinions here plainly show that Congress could not levy any tax on the bonds issued by the respondent or upon income derived therefrom."

### And said further:

(p. 530): "The power 'to establish \* \* \* uniform Laws on the subject of Bankruptcies' can have no higher rank or importance in our scheme of government than the power 'to lay and collect taxes'. Both are granted by the same section of the Constitution, and we find no reason for saying that one is impliedly limited by the necessity of preserving independence of the states, while the other is not."

"If federal bankruptcy laws can be extended to respondent, why not to the state?"

"If obligations of States or their political subdivisions may be subjected to the interference here attempted, they are no longer free to manage their own affairs;"

"Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted. \* \* \* The sovereignty of the state essential to its proper functioning under the Federal Constitution cannot be surrendered; \* \* \*"

The Court has had occasion to consider the Ashton decision since it was rendered. The first time was upon a petition for rehearing, and that petition was denied October 12, 1936. (299 U. S. 619.)

Waterford Irrigation District, a California Irrigation similar in all respects to the Lindsay-Strathmore Irrigation District filed its petition under Chapter IX. Following the Ashton decision that proceeding was ordered dismissed by the Circuit Court of Appeals for the Ninth Circuit. The District filed in this Court its petition for certiorari which was denied April 5, 1937. (300 U. S. 682.)

Merced Irrigation District, also similar to the appellant district here, likewise had its petition under Chapter IX ordered dismissed by the same Circuit Court of Appeals and petitioned this Court for certiorari. In that petition the district boldly asked that the Ashton case be reviewed and overruled. The petition was denied October 11, 1937. (82 Adv. App. 22.)

Tn

Brush v. Commissioner of Internal Revenue, 300 U. S. 352, 368,

the Court gave further consideration to the Ashton case and said:

"We recently have held that the bankruptcy statutes could not be extended to municipalities or other political subdivisions of a state. Ashton v Cameron County Water Impr. Dist., 298 U. S. 513, 56 S. Ct. 892, 895, 80 L. Ed. 1309. The respondent there was a water-improvement district organized by law to furnish water for irrigation and domestic uses. We said (298 U. S. 513, at page 527, 528, 56 S. Ct. 892, 80 L. Ed. 1309) that respondent was a political subdivision of the state 'created for the local exercise of her sovereign powers. \* \* Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Con-

stitution.' In support of that holding, former decisions of this court with respect to the immunity of states and municipalities from federal taxation were relied upon as apposite. The question whether the district exercised governmental or merely corporate functions was distinctly in issue. The petition in bankruptcy alleged that the district was created with power to perform 'the proprietary and/or corporate function of furnishing water for irrigation and domestic uses The district judge (In re Cameron County Water Impr. Dist. No. 1, 9 F. Supp. 103) held that the district was created for the local exercise of state sovereign powers; that it was exercising 'a governmental function'; that its property was public property; that it was not carrying on private business, but public business. That court, beying denied the petition for want of jurisdiction, the district submitted a motion for a new trial in which it assigned, among other things, that the court erred in holding that petitioner was created for the purpose of performing governmental functions, 'for the reason that the Courts of Texas, as well as the other Courts in the Nation, have uniformly held that the furnishing of water for irrigation was purely a proprietary function \* \* \* ' Substantially the same thing was repeated in other assignments of error. In the petition for rehearing in this court (299 U. S. 619, 57 S. Ct. 5, 81 L. Ed.), the district challenged our determination that respondent was a political subdivision of the state 'created for the tocal exercise of her sovereign powers'. and asserted to the contrary that the facts would demonstrate that 'respondent is a corporation

organized for essentially proprietary purposes.' It is not open to dispute that the statements quoted from our opinion in the Ashton Case were made after due consideration, and the case itself decided and the rehearing denied in the light of the issue thus definitely presented. Compare Bingham v. United States, 296 U. S. 211, 218, 219, 56 S. Ct. 180."

The Ashton decision was not placed upon narrow grounds but upon broad and well founded constitutional principles. It seems to have had careful consideration at the time it was rendered and since. Lower Courts and we may assume the citizens have acted upon it. We have not seen advanced, in the appellants' briefs, what would appear to be a sufficient reason for changing the decision in the Ashton case. Appellants have indicated certain changes in words between Chapter IX and Chapter X but the meaning seems to remain the same. If the Ashton case is not overruled it would seem then that the judgment here must be affirmed and Chapter X likewise held to be beyond the power of Congress.

See also:

James v. Dravo Contracting Co., U. S. ...., 58 Sup. Ct. Rep. 208; 82 L. Ed. Adv. Op. 125.

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# POINT B. THE BANKRUPTCY POWER IS SUBJECT TO THE FIFTH AMENDMENT.

Within the boundary of every irrigation district there are lands that are also within and constitute all or parts of counties, cites, towns, and taxing districts, including school districts, road districts, reclamation districts, and other public agencies, and the welfare of these districts, which share the same lands with the irrigation district, depends in whole or in part upon the success of the irrigation district, and none of their bonds rank ahead of the irrigation district bonds. California courts have held that the lien of assessments levied to pay bonds are of equal rank with counties and other governmental units.

LaMesa, etc. Irr. Dist. v. Hornbeck, 216 Cal. 730, 737.

A California irrigation district bond is a general obligation secured by the power of taxation.

Moody v. Provident Irr. Dist., supra; Judith Basin Irr. Dist. v. Malott, 73 Fed. (2d) 142, 147;

Roberts v. Richland Irr. Dist., 289 U. S. 71,

Lands in an irrigation district can never escape taxation, not even by sale to the district itself, for when lands sold to the district again pass back into private ownership they again become subject to assessments.

Under the provisions of the California Irrigation District Act, Section 39 (see Appendix), it is the duty of the board of directors to levy assessments for the bond obligations as they mature.

It will be presumed that what the law requires to be done has been done. At any rate, the appellees have obtained a vested right in the funds collected, the assessments made, and the tax certificates issued, as well as in the lands sold pursuant to the requirements for sale of tax delinquent lands, and although these may not be strictly property rights, the officers of the district are trustees for the bondholders for such trust properties.

People v. Bond, 10 Cal. 563, 574;

River Farms v. California Gibson, 4 Cal. App. (2d) 731;

Meyers v. City of Idaho Falls, 52 Ida. 81, 11 Pac. (2d) 626, 628;

Shouse v. Quinley, 3 Cal. (2d) 357, 360;

Cruzen v. Boise City (Ida.), 74 Pac. (2d) 1037, 1040.

Thompson v. Emmett Irr. Dist. (Ida.), 227 Fed. 560, 566;

Thompson v. Clark, 6 Cal. (2d) 285, 296;

Hidalgo County Rd. Dist. v. Morey, 74 Fed. (2d), 101, 104.

In this connection attention is directed to the writ of mandate (R.50.) issued by the Superior Court.

Since the 90's the agriculturists of California and its law-makers have studiously applied themselves to the task of making these bonds the most desirable securities upon the market. This they have done for the purpose of developing the State of California through the means of its greatest resources, irrigation and agriculture. A certificate bearing the Great Seal of the State of California is affixed to each irrigation bond, approved by the Commission, hereinabove referred to, irrevocably declaring it to be a lawful investment for banks, insurance companies, trust funds, and the like, yet under this act of Congress these bonds are to be singled out to be scaled down, whereas bonds of equal rank, county bonds, school bonds, and other bonds, are to be paid in full and while mortgages and deeds of trust are to be benefited by the reduction of the bonded debt of the irrigation district, insuring the payment of these secondary obligations at the expense of a preferred class.

Furthermore, no account is taken of Section 52 of the California Irrigation District Act, which, as interpreted by the decisions of the California Supreme Court,

Selby v. Oakdale Irr. Dist., 140 Cal. App. 171, makes each bond and coupon when presented an obligation with a separate priority as to the order of payment.

Finally, property rights are transferred from the bondholders to the landowners. The landowners of the district, in a broad sense, since the state has delegated to the local community a wide discretion and given to the landowners a certain interest upon dissolution, are somewhat comparable to the stockholders of a corporation, and under the principles of the *Boyd* case one class of creditors is not permitted to par-

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cipate in the assets until provision has been made or the superior class. There is no right in the stock-olders to receive anything out of the corporation efore all the creditors have been paid, and it was for hat reason that there was written into the provisions of the Corporation Reorganization Act the provision hat the court must see that the act does not discriminate unfairly in favor of any class of creditors. That appears to be the reason and purpose of that provision.

We find such a provision in the Municipal Bankuptcy Act but the plan in this case does not propose ny such distinction.

We take it that if this statute is constitutional then he court has power to violate trust provisions, to single out the irrigation bondholders for scaling down of lebts, and to permit the school district bondholders and he county bondholders to be paid in full; to permit he holders of junior encumbrances, namely, mortgages and deeds of trust, to collect their debts in full at he expense of the bondholders; to permit the stock-olders, as it were, of the corporation, namely, he landowners of the district, to retain part of their ssets when the first lien creditor will be paid less han 60% of the face amount of his obligation.

As a matter of justice, fairness and equity such a sing cannot be done, but the statute purports to do, and therefore we have treated the question as rgely a legal question and we maintain that if the et permits these things to be done the act is unconitutional.

The now historic Boyd case establishes as a result that if the plan of reorganization gave a benefit of the stockholders of the old corporation, old creators who had received no offer of participation the plan could follow the property of the old corporation into the hands of the new corporation to extent of the benefit conferred upon the stockholders.

Northern Pacific Ry. Co. v. Boyd, 228 U. 482, 33 Sup. Ct. 554 (1913).

Upon reorganization the stockholders may not ceive any interest or rights in the reorganized corration in preference to the creditors.

Railroad Co. v. Howard, 74 U. S. (7 Wa. 392 (1868);

Louisville Trust Co. v. Louisville Ry. Co., 1 U. S. 674, 19 Sup. Ct. 827 (1899);

Mountain State Power Co. v. Jordan Lumb Co., 293 Fed. 502, certiorari denied, 264 S. 582, 44 Sup. Ct. 332 (1924);

Western Union Tel. Co. v. United States Mexican Trust Co., 221 Fed. 546.

The Boyd case states the principle that any plot of reorganization which provides for the participate of stockholders without making provision for uncured creditors is an unfair plan, and that this true whether or not any equity exists in the proper of the old company above the secured indebtedness. The principle of the Boyd case is really one of frauction to the conveyance. For the purpose of doing just the veil of the corporate entity is pierced and

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In the Boyd case the court declared:

"For, if purposely or unintentionally a single creditor was not paid or provided for in the reorganization he could assert his superior rights against the subordinate interests of the old stockholders in the property transferred to the new company. Their original contribution to the capitai stock was subject to the payment of debts. The property was a trust fund charged primarily with the payment of corporate liabilities. Any device whether by private contract or judicial sale under consent decree, whereby stockholders were preferred before the creditor was invalid. Being bound for the debts, the purchase of their property by the new company, for their benefit, put the stockholder in the position of a mortgagor buying at his own sale." (Italics ours.)

From this quotation it will be readily seen that the Boyd case has as its underlying principle the idea that the mortgagor is not to be allowed to participate in any plan of reorganization which does not first provide for all of its creditors. If it were allowed to do so while any creditor was excluded, the result of the foreclosure sale would be a fraudulent conveyance.

The bankruptcy power is subject to the Fifth Amendment.

Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 589.

The operation of this act violates the Fifth Amendment in that (1) it takes trust funds which belong to

the appellees, (2) it transfers rights from the appellee to bondholders of other taxing agencies, (3) it transfers property from the appellees to mortgage holder within the district, (4) it transfers property from the appellees to landowners, (5) it violates the principle of the *Boyd* case.

Furthermore, if the public interest requires, resonant should be had to the taxing power so that the burde of relief afforded in the public interest may be born by the public.

Louisville Joint Stock Land Bank v. Radford 295 U. S. 555, 602;

County of Los Angeles v. Jones, 6 Cal. (2d) 698 County of San Diego v. Hammond, 6 Cal. (2d) 709;

City of Crescent City v. Moran, 92 C. A. D. 45

POINT C. REGARDLESS OF THE CONSTITUTIONALITY CONTINUES OF THE ACT, THE PETITION DOES NOT STATE FACTS BUT FIGURE TO CONSTITUTE A CAUSE OF ACTION OR GIVE THE COURT JURISDICTION.

1. The petition does not show insolvency and it do nies the truth of the allegation that the district is usable to meet its debts as they mature (R. 5. and 8. stating that "petitioner did in the year 1933 and a years subsequent thereto" operate under Sec. 11 of the Districts Securities Commission Act of the State California (Appendix). Under this statute the district was and is only required to levy such assessment as it is "reasonably possible for the lands in said district, taken as a whole, to pay".

2. The petition shows that each bond and coupon is in a separate class and not "payable without preference out of funds derived from the same source" as required by Section 83, subsection b, for inasmuch as the petition affirmatively shows that the bonds and coupons have been presented as provided in Section 52 of the California Irrigation District Act (Appendix) and are therefore payable in order of presentation, and not pro rata. (R. 3......)

Bates v. McHenry, 123 Cal. App. 81.

3. The petition also shows on its face that the required consents of creditors have not been obtained inasmuch as the only consent obtained is that of the Reconstruction Finance Corporation, which is not affected by the plan, because despite the wording of Section 82 purporting to provide that any agency of the United States holding securities acquired pursuant to contract with any petitioner "shall be deemed a creditor in the amount of the full face value thereof", Reconstruction Finance Corporation is not affected and is not the owner of the bonds as a matter of law.

The plan itself states that "provision is made in the plan for the protection of the interests" of such creditor (R. Z...), a situation eliminating the right to count these claims in reckoning the percentage of consents. Section 83, subsection c. Furthermore, as indicated above, the charter of the Reconstruction Finance Corporation limits the right of that corporation to make loans to irrigation districts for the purpose of enabling them to reduce or refinance their outstanding indebtedness. (Title 43, Section 403, U. S. C.) The cor-

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it desumsunsund all of the te of disments disporation could only have acquired bonds under the act, and having acquired them they did so pursuan to that act, and they can never collect from the di trict more than the amount already loaned, 59¢ on the dollar, with 4% interest. They are therefore not as versely affected by the plan, and the petition mu fail for insufficiency, the act specifying, Section 83, subsection a, that the petition shall state the creditors owning 51% in amount of securities "a fected by the plan" have accepted it in writing The provision that the contents of the list of cred tors shall not constitute admissions by the pet tioner, obviously placed in the act to entitle the pet tioner to make proof of holdings, is no denial of the elementary truth of the assertion that the petitic shows on its face it is not supported by consents creditors affected by the plan,

Under its charter the corporation could determine that all or by far the major part of the debts of the district could be reduced by the loan. This point we reached.

In this connection attention is called to the order approving petition as properly filed and for notice creditors (R. 25), signed by the district judge of parte, in which it is recited that oral testimony we offered, and the court cites "that approximately 87 of such securities have in writing accepted said plan. The court is not authorized by the act to determine this matter, except for the purpose perhaps of passing upon the sufficiency of the petition in a preliminar way.

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4. The plan shows gross unfairness on its face since if it be construed that the Reconstruction Finance Corporation is a creditor affected by the plan, it is proposed in the plan that the Reconstruction Finance Corporation shall receive bonds payable over a period of years and constituting a marketable security, bearing 4% interest, whereas the appellees under the plan are to receive cash, which they cannot now invest in such attractive securities.

#### POINT D. THE CAUSE IS RES JUDICATA.

At the hearing on the motion to dismiss, and on the return to the order to show cause, appellees filed a certified copy of the "Judgment of Dismissal" in the former proceeding under Section 30 entered July 26, 1937 (R. £.Z..), entered pursuant to the Circuit Court Mandate in Bekins v. Lindsay-Strathmore Irrigation District, 88 Fed. (2d) 1004.

Subsection "h" of Section 83 of the Act provides that Chapter X shall not be construed to modify or repeal the former act and only that "the initiation" of proceedings or the "filing of a petition" under Section 80 shall not constitute a bar.

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# POINT B. THE UNITED STATES IS NOT A PROPER PARTY TO THIS APPRAL.

The point here is that the Judiciary Reform Act, Section 401, provides that the court shall permit the United States to intervene upon the question of constitutionality of the act "whenever the constitutionality of any act of Congress affecting the public interest is drawn in question \* \* in any suit \* \* \* to which the United States, or any agency thereof \* \* is not a party". Appellees make the following points:

- (1) This is not an act affecting the public interest, since only the relationship between citizens of one state and the state itself, or its instrumentality, are affected. It may be a matter of public concern of the State of California, but it is no matter of public concern of the peoples of the United States.
- (2) Inasmuch as the Reconstruction Finance Corporation, an agency of the United States, is apparty to the proceeding if it is a bondholder compelled to give consent it has consented to the plan; it has filed its proof of claim.
- (3) The form of government of the United States does not contemplate or permit the government to interfere in the private affairs of its citizens even where those private affairs result in litigation between parties as to private rights.

"The United States has no inherent sovereign powers, and no inherent common law prerogatives and it has no power to interfere in the personal or social relations of citizens by virtue of authority deducible from the general nature of sovereignty."

65 Corpus Juris 1254.

ANSWER TO BRIEF OF APPELLANT LINDSAY-STRATHMORE IRRIGATION DISTRICT.

At the time of writing this brief, March 18, 1938, no brief has been received on behalf of the United States in cause No. 757, and it is considered that the brief of the appellant Lindsay-Strathmore Irrigation District is sufficiently answered by the arguments set forth above, except that attention is here called to the fact that appellees take the position that by whatever name called, Chapter X purports to be a statute on the subject of bankruptcy, and that it does seek to adjust the relationship between debtors and creditors, and that the question of the extent of the compulsion involved is not determinative of the nature of the petition.

Furthermore, appellant's argument in points 1 and 3 are somewhat inconsistent since in point 1 it claims that Chapter X is a law on the subject of bankruptcy, whereas in point 3 appellant contends that there must be some distinction drawn because "no compulsion is brought to bear upon the debtor in a composition case". The only compulsion is the coercion felt by the dissenting creditors.

If Congress has any power it has plenary power.

### ANSWER TO THE BRIEF OF UNITED STATES.

The argument of the government, upon which we wish to comment, will be considered in the order in which it is there set out in the Solicitor's brief.

## I. THE NECESSITY FOR FEDERAL RELIEF.

Emergency, if such there be, creates no enlargement of power.

Worthen v. Kavanaugh, 295 U.S. 56.

In fact, it may well be, as said by the Supreme Court of Nebraska in First Trust Company of Lincoln v. Smith, 277 N. W. 762, that the emergency created by the depression is a thing of the past and the country now faces a permanent condition of affairs.

It is thought that the amount of one billion dollars or more involved in the 2000 taxing units which defaulted in the late depression is the amount of the bond issues involved—not the amount of the default; but even so, the fact that but 47 petitions (less than one to the state) were, under Chapter IX, ever approved, would seem to show the lack of any real need of this legislation, even conceding that the point is material.

### II. THE ACT IS NOT WITHIN THE BANKRUPTCY POWER.

The bankruptcy power, even under the assumption that it extends to the State or its agencies is inapplicable to the Lindsay-Strathmore Irr. Dist. because,

The Lindsay-Strathmore Irrigation District Is Not the Debtor.

The sole remedy of the bondholders is to compel the levy of assessments upon all of the lands of the district by a writ of mandate.

> Nevada National Bank v. Poso Irrigation District, 140 Cal. 344;

> Thompson v. Perris Irrigation District, 116 Fed. 769;

Perris Irrigation District v. Thompson, 116 Fed. 832;

Moody v. Provident Irrigation District (supra).

The case of *Moody or Provident Irr. Dist.* (supra) holds that the district acts in the capacity of trustee under Section 29 of the California Irrigation District Act (appendix).

We are justified, therefore, in giving consideration to the proposition that the obligations on the bonds of the Irrigation District in California are not debts of the district within the meaning of the bankruptcy act. It is true that the obligations on the bonds arise from the loan of money to the district, which of itself under the English Common Law, would create an implied assumpsit. But the obligation thus created has been changed to a statutory contractual obligation and while the bond contains a promise to pay, we must take the case presented by the bonds and the statutes by its four corners, from a consideration of which we arrive at the conclusion that the obligation of the irrigation district as a juristic person is the obligation to carry out the duties imposed by the statutes providing for the levy of assessments and the collection of the same and the payment of the proceeds

thereof to bondholders as provided by the California Irrigation District Act.

It would appear, therefore, that the sole obligation of the district and its officers is to perform those duties, and once having performed them there is no further obligation upon the district. The fact that no execution can be issued for the obligation, the fact that payment cannot be recovered from any fund other than the bond fund, the fact that the district cannot be compelled to pay, except as moneys come into the bond fund, lead to the conclusion that the bond is not a debt or an obligation in the sense and meaning of the bankruptcy act, and that in so far as the California Irrigation District is concerned, there is merely a legal duty imposed upon a trustee, the irrigation district, to perform certain duties prescribed by the legislature.

This question bears upon the problem in hand in two important particulars—first, the obligations under the bonds are not debts which could be discharged by proceedings under the bankruptcy act; secondly, if there is any obligation, the obligation is that of the landowner to meet the assessments levied and that question bears upon the fifth amendment, because other obligations of the landowners, such as their obligations to pay county and school bonds, and their obligations to pay assessments for other improvements, and their mortgages and deeds of trust are not scaled down or refunded in the same proportion, or at all.

It was said in the case of Judith Basin Irrigation District v. Malott, 73 Fed. (2d) 142, in a case in which all of the property had been sold at tax sales,

and in which the Court noted that the law of Montana is patterned after the Wright Act of the State of California, that:

"It has been uniformly held that bonds of an irrigation district issued in pursuance of the Wright Act—are general obligations of the district."

### and further:

"The payment of the bonds of earliest maturity does not release any parcel of land from the lien of the bonds, and all of the lands within the district, according to the terms of the bond and of the statute, are liable for the payment of the unpaid bonds,"

In the case of

Hershey v. Cole, 130 Cal. App. 683, 20 Pac. (2d) 972,

the Court said:

"The conclusions drawn therefrom that there is no contract or quasi contract in legal effect between the landowners of the district and the purchasers of bonds of the district does not appear to be supported either in principle or by the authorities."

From one view, therefore, these debts are not debts of Lindsay-Strathmore Irrigation District, although they are general obligations in the sense that all of the land within the district is forever liable to be taxed therefor until the bond is paid, even after tax sale. If, as has been said, equity will pierce the veil and look at the facts, in so doing will find that substantially, the bond is not a debt of the irrigation district, but is either one of two things, either it is a debt of the landowner as such, in accordance with

the theory of Hershey v. Cole (see Dissolution Statutes (Appendix B)), that the bond is a contract between the landowner and the bondholder, or it is debt of the sovereign State of California. If it is debt of the landowner it explains why one's sens of justice and fairness is shocked by realizing the under the Municipal Bankruptcy Act this debt cabe scaled down on the theory that it is a debtor of the irrigation district, whereas the obligations of the same land to bondholders of the county, school districts an other tax units will be paid one hundred cents on the dollar, and also at the same time obligations upon the mortgages and deeds of trust of the landowners will escape reduction or scaling down altogether.

On the other hand if the view be taken that the are obligations of the sovereign, and in support of this view it it pointed out that these bonds bear the Seal of the State of California, that they bear a certificate of the State Controller, and that since the sovereign created the district and it is a state legislative mandatory, Tarpey v. McClure, 190 Cal. 593 then in a true sense these are debts of the sovereign which sovereign also created debts in favor of count bondholders and school bondholders, limited perhaps as to security to a certain geographical division of the State. It has been seen that the correct view is that the property of the district is the property of the State.

In either view taken, therefore, the Lindsay-Strath more Irrigation District cannot be a subject of bank ruptcy, for the real debtor, whether it be the Stat or whether it be the landowner, is not reached in thes proceedings. Which is just another illustration of the fact that a statute which disregards sound principles of law and justice is sure to be difficult to fit into any sound system of jurisprudence.

#### THE EXTENT OF THE BANKBUPTCY POWER.

The solicitor general suggests that apart from the effect of the Eleventh Amendment "if only the State have an indebtedness which it cannot pay the sovereign aspects of the state government are irrelevant to the bankruptcy power".

The solicitor general cannot himself raise the whole question of State sovereignty and States rights and the relationship of the State to Federal power and limit appellees to the narrow consideration of the effect of the proceedings upon the appellant district.

By the scope of the challenge to the whole theory of State sovereignty, appellees warn that this attack is but the forerunner of the government's position that Congress has power to extend bankruptcy to the State itself; that Congress has also power to tax the bonds of the State agencies and to tax the properties thereof.

We reiterated the principle that if Congress has any power under the bankruptcy clause, it has plenary power—and such sweeping power would be shocking to our concept of dual sovereignty under our constitutional system and therefore we may safely assume that the power does not exist.

Next we take sharp issue with the statements of counsel that "It is settled beyond dispute that the Federal Courts have full power to adjudicate and control the relations between districts of this nature and their creditors".

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ank-State these The Government concedes that in the absence of statute, receivership is not a remedy available in Federal or State Courts. Furthermore equity is not available.

Federal Courts have through their equity jurisdiction exercised considerable control over classes of corporations which were not amenable to the bank-ruptcy statutes, and it was not unreasonable to expect therefore that creditors of municipalities should appeal to the equity side of the Federal Courts and seek federal receivership for the purpose of the enforcement of their rights, particularly where the state law gave little or no remedy which was of any substantial benefit to the bondholder or creditor.

In the case of

Heine v. Board of Levee Commissioners, 19 Wall. (86 U.S.), 655,

the Court said:

"The power we are asked here to exercise is the very delicate one of taxation. This power belongs in this country to the legislative sovereignty, State or National. In the case before us the National sovereignty has nothing to do with it. The power must be derived from the legislature of the state. So far as the present case is concerned, the State has delegated the power to the Levee Commissioners. "It certainly is not vested as in the exercise of an original jurisdiction in any Federal Court. It is unreasonable to suppose that the legislature would ever select a Federal Court for that purpose. It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by

the judiciary of the federal government of the legislative functions of the State government."

See also Merriwether v. Garrett (supra). The government seems unable to cite any reliable authority holding that the Federal Courts have the power to levy and collect taxes by any officer of the Court, except such authority be expressly or impliedly given by state law.

Whatever jurisdiction has been entertained on behalf of the bondholders has been to enforce rights and uphold contracts—never to destroy or effect their repudiation.

#### VIOLATION OF THE CONTRACTS CLAUSE.

The question of the contract clause seems inapplicable here:

- (a) The act dispenses with state consent.
- (b) The "Enabling Act" of California (Stats. 1935, Chapter 24), is not effective as a consent to these proceedings (see Appendix).
  - (1) The title to the act relates to Chapter IX and not to Chapter X or any other law.
  - (2) Section 1 of said act, states that "For the purpose of this act a 'taxing district' is hereby defined to be a 'taxing district' as described in Chapter IX" \* \* They are there described as political subdivisions. If so, the rule in Ashton applies. If not, the rule in:

In re Imperial, 87 Fed. (2d) 355, applies. (See Brief of Appellant District, p. 16.)

(3) Moreover, section six negatives consent since by it the district may repudiate the plan after it is confirmed by the Court.

NO CONSENT ON THE PART OF THE STATE CAN IMPAIR THE OBLIGATION OF CONTRACT OR ADD TO THE POWERS OF CONGRESS UNDER THE BANKBUPTCY CLAUSE.

The state is prohibited by Clause 1, Section 10, Article 1, of the Constitution from impairing the obligation of contract.

It cannot be doubted that bonds of a taxing district, such as here involved, constitute contracts of that agency and that the law at the time the contracts were made enters into and becomes a part of the contracts.

(Hershey v. Cole, 130 Cal. App. 683, 688, 695.)

It follows that if these contracts (bonds) are to be impaired without the consent of the parties, it must be done under the Bankruptcy Clause and not otherwise. All other impairment is expressly prohibited. If Congress has this power, it may be exercised through proceedings, voluntary or involuntary, with or without, or over, the protests of the state, or in behalf of, or against, the agency of the state or the state itself. If the Congress does not have the power, the state is wholly powerless to give it except through concurrent action in the form of an amendment to the Constitution. An extremely important feature of the American constitutional arrangement is the reservation of power to the states or the people. One state cannot amend the Constitution.

Surely, since the Constitution of the United States prohibits the state from impairing the obligation of contracts, the Congress of the United States cannot empower the state to do so.

Equally, if the Constitution of the United States does not authorize the Congress to pass a bankruptcy act which would apply to a state or a state agency, the legislature of the state cannot pass an act to authorize Congress to do so.

In Hopkins v. Cleary, 296 U.S. 315, 340, the Court said:

"Aside from the direct interest of the state in the preservation of agencies established for the common good, there is thus the duty of the parens patriae to keep faith with those who have put their trust in the parental power. True, most of the shareholders in the cases now before us assented to the change. Even so, an important minority were not represented at the meetings, and their approval is not shown. Creditors others than shareholders have not been heard from at all. To these non-vocal classes the parens owes a duty. """

# III. THE RESERVED RIGHTS OF THE STATES AND OF THE PEOPLE ARE INVADED.

The Solicitor General says these things:

- 1. "Apart from any effect of the Tenth Amendment, it (the act) violates no constitutional limitation."
- 2. "The Tenth Amendment has no application to powers which are delegated to the Federal Government."

- 3. "But perhaps the most frequent expressed purpose of the Tenth Amendment was to insure that the states should continue sovereign with respect to the numerous powers which had not been granted to Congress."
- 4. "The adoption of the Tenth Amendment was accompanied by a deliberate refusal to reserve to the states all powers not 'expressly' granted to the national government."
- 5. The conflicting viewpoints "\* \* indicate the need for a more precise articulation of the relationship between state and nation when the latter undertakes to exercise delegated power."
- 6. "The argument of respondents so far as it is based on the Tenth Amendment, must of necessity begin with the premise that the power in question is reserved to the states alone and therefore cannot be exercised or affected by the central government.
- 7. "If a given power is reserved to the states alone, it is only because it is not delegated to the national government."
- 8. "The existence of federal power must accordingly be determined solely in the light of the power granted to the Federal Government. This principle of constitutional interpretation in no way excluded from consideration the necessity of maintaining unimpaired our dual system of government."
- 9. "However, recognition of the fact that the scope of Federal powers must be construed in the light of the dual system of government does not alter the

basic principle that the question must always be whether or not the power has been granted to the United States."

Upon analysis these statements, which are the very heart of the Solicitor General's argument, amount to this:

That there is no constitutional limitation upon the bankruptcy power except it be in the Tenth Amendment. This Amendment has no application to powers delegated to Congress and unless the power is reserved to the states it is delegated to Congress. Dual sovereignty must be interpreted in this light also. The ultimate question is, therefore, whether or not the power was granted to Congress and the Court should make a new declaration on this subject of states rights.

The Government seems to have built up a startling and hitherto unrevealed argument under this head.

- 1. The doctrine of dual sovereignty is to bow to the supremacy of delegated powers.
- 2. Unless the power is reserved to the states it is delegated to Congress.

At the outset appellees concede that by the Tenth Amendment not only are express powers of Congress recognized, but also the implied powers. And appellees concede further, that the intention of the framers of the Constitution was that the Constitution standing alone was intended to mean everything that is embodied in this Amendment, but the people deemed it necessary that there be no argument or chance upon the subject, hence the Amendment.

On the other hand, appellees do not concede that the doctrine of dual sovereignty is fully expressed in or limited by the Tenth Amendment.

On the contrary, the Tenth Amendment must be interpreted in the light of this doctrine.

Collector v. Day, 11 Wall. 113.

Two principles of construction of our Constitution bar acceptance of the Government's position—the first is the doctrine of dual sovereignty under which neither sovereign may impair the powers of the other and neither may surrender its powers to the other.

The second is that neither the states nor the nation may encroach upon the rights of the sovereign people.

The Tenth Amendment was careful to express this second principle wherein it says "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Here is that "No-Man's Land" of the Constitution which the Government would remove.

Rather here is that last barrier to the deprivation of certain inalienable rights which are retained by the sovereign people from whom they can be taken only by the vehicle of grant provided by the Constitution,—Amendment.

"The powers the people have given to the general government are named in the Constitution and all not there named either expressly or by implication are reserved to the people and can be exercised only by them, or upon further grant from them."

Per Mr. Justice Brewer, concurring in United States v. Williams, 194 U. S. 279, 294.

The People may abolish trial by jury and the writ of habeas corpus. The People may do away with free speech and the liberty of the press. They may permit titles of nobility and religion regulated by law, but until the People have been consulted neither the legislature of the states nor the nation can abolish the jury nor the writ, nor abridge the freedom of speech, etc. In other words, there are a few powers that the People simply have not given to either of their governmental agents.

# IV. THE ACT INVADES THE SOVEREIGN EIGHTS OF THE STATES.

The Government concedes that unless the powers granted the district by the state "include authority to compose its debts and to invoke the jurisdiction of the bankruptcy court, the taxing agency cannot seek the benefit of the Act of August 16, 1937."

We have seen that this act does not require the state consent, but if it does—then the constitutional prohibition imposed by U. S. Constit. Art. 1, Sec. 10 and Art. 1, Sec. 16 of the California Constitution (impairment of the obligation of contracts) applies, and as said in the *Ashton* case, one state cannot enlarge the power of Congress.

Appellees reiterate that this district is not subject to the exercise of general equity powers of the Federal Courts; that respondents (appellees) emphatically have not asked that nor ever represented that receivership proceedings lie within the Federal powers as to California irrigation districts.

Appellees note that the Government likewise concedes, finally, that "The power to compel acceptance by minority creditors is the heart of the bankruptcy power" although it claims that it operates upon the creditors of the district. Income tax would operate in the same way.

The Solicitor places a good deal of stress upon certain California cases holding that these districts are not "political subdivisions".

Whether these districts are, or are not, political subdivisions in the sense in which the term has been employed, we submit is quite immaterial. By the highest authority, we have seen that they are state agents exercising governmental powers.

La Mesa Irrigation District v. Hornbeck, 216 Cal. 730 (we respectfully submit), does not hold the tax liens to be inferior to those of counties but on the contrary holds the lien of state, county, city and irrigation taxes to be on a parity. Furthermore, under Sec. 45-8 California Irrigation District Act (Appendix A) the district is entitled to possession and to the rents before the state itself. (The period for redemption for the state is five years. The period for the district is three years.)

#### CONCLUSION.

We have seen that the Bankruptcy Clause and the Taxing Clause of the Constitution are both couched in the most general language and we have further seen that if the Federal Government and this Court has held that if the Federal Government were permitted to tax the state and its governmental agencies, it would necessarily follow that the Federal Government would have power by taxation to embarrass, hamper and ultimately destroy the independence and the independent functions of the state. This necessarily follows because of our dual system of government. We have further seen that a bankruptcy measure that could place the fiscal affairs of the state under the control of the Court of Bankruptcy could likewise destroy the independence and the independent functions of the state. Therefore, the state would not, it would seem, be any more subject to the Bankruptcy Clause than to the Tax Clause.

We have seen that an irrigation district in California call it what you will—a political subdivision, a public corporation, a state agency, a governmental mandatory—is in any event, an agency of the state performing prescribed governmental functions on behalf of the state and thus, partakes of state sovereignty.

We have further seen that the organization of the irrigation district is in legal effect, simply a trustee to carry on certain prescribed work on behalf of the state on the one hand, or the landowners on the other, and that the true debtor is either the state or the

landowner, and that any act that would permit the scaling down or repudiation of the district bonds without at the same time, likewise scaling down or repudiating bonds of other public agencies and private mortgages and trust deeds, is discriminatory and violative of the Fifth Amendment and denies to the district bond holder the equal protection of the laws.

It is respectfully suggested that the Ashton case has settled the question here involved; that Chapter Ten of the Bankruptcy Act does not cure the constitutional defects that were found in Chapter Nine and that following the Ashton decision, Chapter Ten of the Bankruptcy Act ought to be held to be beyond the power of Congress and the judgment of the lower Court sustained.

For the foregoing reasons, the judgment of the District Court should be affirmed.

Dated, Turlock, California, March 25, 1938.

Respectfully submitted,

CHARLES L. CHILDERS,

Counsel for Appellees,

Milo W. Bekins, et al.

W. Coburn Cook,

Of Counsel.

(Appendices A, B, C and D Follow.)

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## **Appendices**

### CALIFORNIA IRRIGATION DISTRICT ACT AND RELATED LAWS.

### Preliminary statement.

In 1887 California passed the first irrigation district act of general application providing for the issuance of bonds. This act, known as the Wright Act, remained on the statute books until 1897, when it was rewritten and re-enacted as an entirely new law, which with its amendments is now known as the California Irrigation District Apt.

Only certain portions of the acts hereinafter referred to are set forth, being those portions which were deemed important.

<sup>(</sup>Note): The portions of the irrigation district act set out are intended to be as the act was when the bonds were issued.

## Appendix A

### 1. THE CALIFORNIA IRRIGATION DISTRICT ACT.

An act to provide for the organization and government of irrigation districts, and to provide for the acquisition or construction thereby of works for the irrigation of the lands embraced within such districts, and, also, to provide for the distribution of water for irrigation purposes. (Approved March 31, 1897, Stats. 1897, p. 254.)

### Proposal for organization,

Section 1. A majority in number of the holders of title, or evidence of title, including the holders of possessory rights under receipts or other evidence of the rights of entrymen or purchasers under any law of the United States or of this state, to lands susceptible of irrigation from a common source and by the same system of works (including pumping from subsurface or other waters); such holders of title, or evidence of title and of possessory rights, representing a majority in value of said lands, according to the equalized county assessment roll or rolls for the year last preceding, may propose the organization of an irrigation district, under the provisions of this act. Such lands need not consist of contiguous parcels.

Said equalized assessment roll or rolls shall be sufficient evidence of title and of such possessory rights, for the purposes of this act, except that where property is assessed to unknown owners or the assessment roll does not purport to give the true name or gives

the names of a portion only of the owners of any parcel, the actual owners of said property shall be considered the owners for all the purposes of this act, and owners of undivided interests may sign for such interest and each such owner shall be considered as one assessment payer; and provided, further, that guardians, executors, administrators or other persons holding property in a trust capacity under appointment of court may sign any petition provided for in this act, when authorized by an order of court, which order may be made without notice. A certificate of acknowledgment taken before a notary public or justice of the peace of any state, or an affidavit by any person in the presence of whom such petition was signed, shall be sufficient evidence of the genuineness of such signature. (As amended, Stats. 1915, p. 1367.)

## Petition to organize district.

Sec. 2. In order to propose the organization of an irrigation district, a petition shall be presented to the board of supervisors of the county in which the lands within the proposed district, or the greater portion thereof, are situated, signed by the required number of holders of title, or evidence of title, including such aforesaid possessory rights, to lands within such proposed district, and representing the requisite majority in value of said lands, which petition shall set forth generally the boundaries of the proposed district and also shall state generally the source or sources (which may be in the alternative) from which said lands are proposed to be irrigated, and shall pray that the territory embraced within the boundaries of the proposed

district may be organized as an irrigation district under the provisions of this act. The petition may consist of any number of separate instruments, and must be accompanied with a good and sufficient undertaking, to be approved by the board of supervisors, in double the amount of the probable cost of organizing such district, conditioned that the sureties shall pay all of said costs in case said organization shall not be effected. Said petition shall be presented at a regular meeting of said board and shall be published for at least two weeks before the time at which the same is to be presented in some newspaper of general circulation printed and published in the county where said petition is presented, together with a notice stating the time of the meeting at which the same will be presented; and if any portion of the lands within said proposed district lie within another county or counties, then said petition and notice shall be published, as above provided, in a newspaper published in each of said counties. When contained upon more than one instrument, one copy only of such petition need be published, but the names attached to all of said instruments must appear in such publication. On or before the day on which said petition is presented to said board of supervisors, a copy of said petition shall be filed in the office of the state engineer. When said petition is presented, said board of supervisors shall hear the same and shall proceed to determine whether or not said petition complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required, and must hear all competent and relevant testimony offered in support of or in opposition thereto. Said hearing may be adjourned from time to time for the determination of said facts, not. exceeding two weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures thereto, shall vitiate any proceedings thereon; provided, such petition or petitions have a sufficient number of qualified signatures attached thereto. The determination of the board shall be expressed by resolution. If it shall determine that any of the requirements hereinbefore set forth have not been complied with, the matter shall be dismissed, but without prejudice to the right of the proper number of persons to present a new petition covering the same matter or to present the same petition with additional signatures, if such additional signatures are necessary to comply with the requirements of this act. If the board of supervisors shall determine that the petitioners have complied with the requirements hereinbefore set forth, it shall cause a copy of the resolution so declaring to be forwarded to the state engineer and shall postpone further hearing of said petition for one month, or from time to time, not exceeding one month in all. Upon receiving a copy of said resolution, the state engineer shall make or cause to be made such an investigation as may be practicable, with a view to determining whether any condition or conditions exist that would justify him in reporting against the organization of the proposed district. He shall report in writing on the matter to the board of supervisors from which the copy of said resolution was received, and said report shall be made within one month from the date of the adoption of said resolution.

but failure by the state engineer to perform any duty required herein shall not invalidate the organization of any district, nor shall any board of supervisors, because of failure to receive a report from the state engineer, delay the proceedings herein required for a longer time than is allowed herein. If the state engineer shall report that the supply of water available for the use of the proposed district, or that may be acquired by any practicable means, including the condemnation of existing rights, is not sufficient or that the project is not feasible for any other reason or reasons and if such report shall be filed with the said board of supervisors before the expiration of one month from and after the date of the adoption of the aforesaid resolution, the hearing of the petition shall again be continued for one month and shall then be dismissed, unless the board of supervisors shall be required in writing by three-fourths of the holders of title or evidence of title, including possessory rights to lands within said proposed district to grant the same; provided, that if such request is not received, the board of supervisors may modify the plans for the proposed district in accordance with recommendations by the state engineer. If the report of the state engineer shall not compel the continuance of the matter as aforesaid, the board of supervisors shall, at the regular meeting at which said report shall have been received. proceed to a final hearing of the petition, and if said board shall, after receiving an adverse report from the state engineer, decide to modify the plan as set forth in said petition or shall be requested in writing by three-fourths of the holders of title or evidence of

title, including possessory rights, to the lands within said proposed district to grant said petition, said board shall then proceed to a final hearing of the matter. On any final hearing herein provided for, the board may adjourn from day to day, but not for a longer time, until a determination of the matter is reached. On said final hearing said board shall make such changes in the proposed boundaries as it may deem advisable and shall define and establish such boundaries; but said board shall not modify said boundaries so as to exclude from such proposed district any territory which is susceptible of irrigation from any of the sources proposed, unless said board shall decide to modify the plan for such proposed district, as herein provided, nor shall any lands which will not, in the judgment of said board, be benefited by irrigation by means of any of said systems of works be included within such proposed district. Any person whose lands are susceptible of irrigation from any of the proposed sources may, upon his application, in the discretion of said board, have such lands included within said proposed district. (As amended, Stats. 1913, p. 994.)

### Order of supervisors reaffirming conclusions.

Sec. 3. Upon the final hearing of said petition or said matter, the board of supervisors shall make an order reaffirming its conclusions as to the genuineness and sufficiency of the petition and notice hereinbefore provided for, reciting that a report regarding the proposed district has been made by the state engineer and is on file with the other records of the board, and describing the boundaries of the proposed district as

defined and established by said board. Said order shall be entered in full upon the minutes of said board. \* \* \* (As amended, Stats. 1913, p. 996.)

### Findings of board to be conclusive.

Sec. 4. A finding of the board of supervisors in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the State of California upon suit commenced by the attorney general. \* \* \* (As amended, Stats. 1911, p. 139, Extra Session.)

#### District divisions and election of directors.

Sec. 5. If, on said final hearing, the boundaries of the proposed district are defined and established, said board shall make an order dividing said district into five divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, third, fourth and fifth, \* \* \* (As amended, Stats. 1915, p. 1368.)

#### Call and notice for election; ballots.

Sec. 6. Said board of supervisors shall then give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the provisions of this act. Such notice shall describe the boundaries so established, and shall designate a name for the proposed district, and said notice shall be published for at least three weeks previous to such election, in a newspaper published within the county in which the petition for the organization of the proposed district was presented; and if any portion of such proposed dis-

trict is within another county or counties, then such notice shall be published for the same length of time in a newspaper published in each of said counties. Such notice shall require the electors to cast ballots, which shall contain the words "Irrigation District—Yes", or "Irrigation District—No", or words equivalent thereto, and also the names of persons to be voted for at said election. For the purposes of said election the board of supervisors must establish a convenient number of election precincts in said proposed district, and define the boundaries of the same. Such election shall be conducted as nearly as practicable in accordance with the general election laws of the state, but no particular form of ballot shall be required. (Stats. 1897, p. 256.)

#### Elective officers.

Sec. 7. At such election there shall be elected a board of directors and an assessor, tax collector, and treasurer, \* \* \* (Stats. 1897, p. 256.)

### Qualifications of electors.

Sec. 8. No person shall be entitled to vote at any election held under the provisions of this act unless he possesses all the qualifications required of electors under the general election laws of the state. (Stats. 1897, p. 256.)

## General powers and duties of directors.

Sec. 15. The board of directors shall have the power and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required,

and prescribe their duties. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for any canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, by purchase, lease, contract, condemnation, or other legal means, all lands, and waters, and water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal, or canals, and works, including canals and works constructed and being constructed by private owners, lands and reservoirs for the storage of needful waters, and all necessary appurtenances, and also, where necessary or convenient to said ends to acquire and hold the stock of other corporations owning waters, canals, water works, franchises, concessions or rights. But no purchase or lease of any waters, or water rights, or canals or reservoirs, or reservoir sites, or irrigation works, or other property of any nature or kind, or stock in any other corporation, for any price, aggregate rental or consideration, in excess of ten thousand dollars, shall be final or binding on the district, nor shall the purchase price, rental or consideration, or any part thereof, be paid or rendered until a petition of a majority of the holders of title, or evidence of title, and of possessory rights as aforesaid, to lands within the district, such holders of title, or evidence of title, and of possessory rights, representing a majority in value of said land, according to the last equalized assessment roll of the district, if such has theretofore

been made, and if such has not been made, then according to the equalized county assessment roll covering lands of such district, shall have been filed with the board and an order of the board made thereon confirming such purchase. Said board may also construct the necessary dams, reservoirs, and works for the collection of water for said district, and do any and every lawful act necessary to be done, that sufficient water may be furnished to each landowner in said district for irrigation and domestic purposes. The said board is hereby authorized and empowered to take conveyances, leases, contracts or other assurances for all property acquired by it under the provisions of this act, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act, or acquire in pursuance thereof. And in all courts, actions, suits or proceedings, the said board may sue, appear and defend in person or by attorneys, and in the name of such irrigation district. It shall be the duty of said board to establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of said lands, which must be printed in convenient form for distribution in the district. Said board shall have power generally to perform all such acts as shall be necessary to fully carry out the purposes of this act. (As amended, Stats. 1911, p. 510.)

Use of water a public use.

Sec. 17. The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, or the act of which this is supplementary or amendatory, and for domestic and other incidental and beneficial uses, within such district, together with the rights of way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this act is hereby declared to be a public use, subject to the regulation and control of the state, in the manner prescribed by law. (As amended, Stats. 1911, p. 512.)

#### Official bonds.

Sec. 19a. Within ten days after receiving their certificates of election hereinafter provided for, said officers shall take and subscribe the official oath, and file the same in the office of the board of directors, and execute the bond hereinafter provided for. The assessor shall execute an official bond in the sum of five thousand dollars, and the collector an official bond in the sum of twenty thousand dollars, and the district treasurer an official bond in the sum of fifty thousand dollars; each of said bonds to be approved by the board of directors; provided, that the board of directors may, if it shall be deemed advisable, fix the bonds of the treasurer and collector, respectively, to suit the conditions of the district, the maximum amount of the treasurer's bond not to exceed fifty thousand dollars. and the minimum amount thereof not to be less than ten thousand dollars; and the maximum amount of the collector's bond not to exceed twenty thousand dollars,

and the minimum amount of the collector's bond not to be less than five thousand dollars. Each member of said board of directors shall execute an official bond in the sum of five thousand dollars, which said bonds shall be approved by the judge of the superior court of said county where such organization was effected, and shall be recorded in the office of the county recorder thereof, and filed with the secretary of said board. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of county officers and the premiums thereon may be paid by the district; provided, that in case any district organized under this title is appointed fiscal agent of the United States or by the United States in connection with any federal reclamation project, each of said officers shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization, and any such bond may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly and completely perform their respective duties. (As amended, Stats. 1917, p. 760.)

#### Qualification of director.

Sec. 26. A director shall be a resident and free-holder of the irrigation district, but not necessarily of the division for which he is elected. (Stats. 1897, p. 262.)

Sec. 26. A director shall be a resident and free-holder of the irrigation district and a resident of the division which he is elected to represent. (As amended, Stats. 1917, p. 761.)

## Deposit of moneys.

Sec. 27b. Notwithstanding the provisions of any other law relating to the deposit of public money, any money belonging to an irrigation district organized or existing under this act may be deposited by the treasurer or any officer of such district having legal custody of such money in any state or national bank or banks in this state, and such bank or banks are authorized to accept such deposits and to give security for the same as herein provided, \* \* \*. (Stats. 1927, p. 188, as amended by Stats. 1929, p. 686 and Stats. 1933, p. 328.)

#### Recall of officers.

Sec. 28½. The holder of any elective office of any irrigation district may be removed or recalled at any time by the electors; provided he has held his office at least six months. \* \* \* (Added, Stats. 1911, Extra Session, p. 135.)

## Vesting and disposition of property.

Sec. 29. The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district and shall be held by such district, in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this act. And said board is hereby authorized and empowered to hold, use, acquire, manage, occupy

and possess said property as herein provided. The board of directors of said district may determine by resolution duly entered upon their minutes that any property, real or personal, held by said irrigation district is no longer necessary to be retained for the uses and purposes thereof, and may thereafter sell such property. \* \* \* (As amended, Stats. 1909, p. 1075.)

#### Estimate of money needed for improvements.

Sec. 30. For the purpose of constructing or purchasing necessary irrigation canals and works, and acquiring the necessary property and rights therefor. and for the purpose of acquiring waters, water rights, reservoirs, reservoir sites, and other property necessary for the purposes of said district, and otherwise carrying out the provisions of this act, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and also whenever thereafter the board of directors shall find that the construction fund raised by the last previous bond issue is insufficient, or that the construction fund has been exhausted by expenditures herein authorized therefrom and it is necessary to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised. For the purpose of ascertaining the amount of money necessary to be raised for such purposes, or any of them, said board shall cause such surveys, examinations, drawings and plans to be made as shall furnish the proper basis for the said estimate. All such surveys, examinations, drawings and plans, and the estimate of cost based thereon shall be made under the

direction of a competent irrigation engineer and shall be certified by him. (As amended, Stats. 1917, p. 761.)

Report submitted to Irrigation District Commission.

Sec. 30a. The board of directors shall then submit a copy of the said engineer's report to the commission authorized by law to approve bonds of irrigation districts for certification as legal investments for savings banks and for the other purposes specified in the act creating said commission. \* \* \* (Stats. 1917, p. 762.)

### Special election.

Sec. 30c. Thereafter said board when petitioned by a majority of the holders of title, or evidence of title. and of possessory rights to lands within the district. such holders of title, or evidence of title, and of such possessory rights representing a majority in value of said lands according to the equalized assessment roll of the district, if such has theretofore been made, and, if such has not been made, then according to the equalized county assessment roll covering the lands in such district, or when petitioned by not less than five hundred petitioners, each petition to the number of at least five hundred to be an elector in the district, or · to be some person, corporation, association or partnership, the holder of title to land in the district or of evidence of title to land in said district, and which said petitioners signing said petition shall include the owners of not less than twenty per cent in value of the land within the irrigation district, according to the equalized county assessment roll or rolls for the year last preceding, shall immediately call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district in the amount as set forth in said petition shall be issued. (As amended, Stats. 1917, p. 762.)

Life of bonds; interest; denominations.

Sec. 31. (This section at the time of the issuance of the Lindsay-Strathmore Irrigation District bonds provided that the bonds "shall be negotiable in form".) (Stats. 1913, p. 998.)

Paid by annual assessment,

Sec. 33. Said bonds and the interest thereon shall be paid from revenue derived from an annual assessment upon the land within the district; and all the land within the district shall be and remain liable to be assessed for such payments as hereinafter provided. (Stats. 1897, p. 265 and Stats. 1917, p. 764.)

Duty of assessor; improvements exempt.

Sec. 35. The assessor must, between the first Monday in March and the first Monday in June, in each year, assess all real estate in the district, to the persons who own, claim or have possession or control thereof, at its full cash value, \* \* \*. (Stats. 1909, p. 461 and Stats. 1917, p. 764.)

Hearings on objections to assessments.

Sec. 38. (Stats. 1897, p. 267.)

Assessment for interest, principal, rentals, etc.

Sec. 39. The board of directors shall then, within fifteen days after the close of its session as a board

of equalization, levy an assessment upon the lands within the district in an amount sufficient to raise the interest due or that will become due on all outstanding bonds of the district on the first day of the next ensuing January and the first day of the next ensuing July, or that the board of directors believes will become due on either or both of said dates, on bonds authorized but not sold; also sufficient to pay the principal of all bonds of the district that have matured or that will mature before the close of the next ensuing calendar year; also sufficient to pay in full all sums due or that will become due from the district before the time for levying the next annual assessment, on account of rentals, or charges for lands, water rights acquired by said district under lease or contract; also sufficient to pay in full the amount of all unpaid warrants of the district issued in accordance with this act and the amount of any other contracts or obligation of the district which shall have been reduced to judgment; also sufficient to raise such amount not exceeding two per centum of the aggregate value of the lands within the district according to the latest duly equalized assessment roll thereof, as the board of directors shall determine may be needed to be raised by assessment for the general expenses of the district during the next ensuing calendar year. (As amended, Stats. 1917, p. 765.)

## Neglect to make assessment.

Sec. 39b. If as the result of the neglect or refusal of the board of directors to cause such assessment and levies to be made as in this act provided, then the duly equalized assessment made by the county assessor of

the county or each of the respective counties in which the district is situated shall be the basis of assessment for the district, and the board of supervisors of the county in which the office of the board of directors of said district is situated shall cause an assessment roll of said district to be prepared, and shall make the levy required by this act, in the same manner and with like effect as if the same had been made by said board of directors and all expenses incident thereto shall be borne by such district and may be collected by suit at law, which shall be commenced by the district attorney of the county whose board of supervisors caused said assessment roll to be prepared, unless the amount of such expenses shall be paid within sixty days from the time when proper demand shall have been made therefor. In case of the neglect or refusal of the collector or treasurer of any irrigation district to perform the duties imposed by law, then the tax collector and the treasurer of the county in which the office of the board, of directors of such district is situated must respectively perform such duties and shall be accountable therefor upon their official bonds; but, in case any county tax collector shall collect any assessment for any irrigation district, he shall pay the same to the county treasurer, who shall place such money in special fund to the credit of the district and shall disburse the same to the proper persons for the purposes for which such assessments have been levied and shall not pay any part thereof to the treasurer of said district until said county treasurer shall be satisfied that all of the valid obligations for which such assessments were levied and for which payment has been demanded have been paid. (Stats. 1917, p. 765.)

Duty of district attorney.

Sec. 39c. It shall be the duty of the district attorney of each county in which the office of any irrigation district is located to ascertain each year whether the duties relating to the levying and collection of assessments, as in this act provided, have been performed. and if he shall learn that the board of directors or any official of any such irrigation district has neglected or refused to perform any such duty, said district attorney shall so notify the board of supervisors or the county official required by this act to perform such duty in such case, and, unless such board of supervisors or such county official shall proceed to the performance of such duty within thirty days after the receipt of such notice the district attorney shall take such action in court as may be necessary to compel the performance of such duty, and said district attorney shall give such notice to other officials, and shall take such action, as may be necessary to secure the performance in their proper sequence of the other duties relating to the levying and collection of assessments, as in this act provided, that for the enforcement of the levying and collection of any assessment hereafter required to be levied and collected for the payment of any debt hereafter incurred, in case complaint shall be made to the attorney general of the State of California that the district attorney of any county has not performed any duty devolving upon him by the provisions of this section, or that he is not proceeding with due diligence or in the proper manner in the performance of any such duty, the attorney general shall made an investigation, and if it shall be found that such charge or

charges are true, said attorney general shall take such measures as may be necessary to enforce the perform-) ance of the duties relating to the levying and collection of assessments, as in this act provided. (Stats. 1917, p. 766.)

#### Unpaid tolls part of assessment.

Sec. 39f. Whenever any tolls and charges for the use of water have been fixed by the board of directors, it shall be lawful to make the same payable in advance, and in case any such tolls or charges remain unpaid at the time hereinbefore specified for levying the annual assessment the amount due for such tolls and charges may be added to and become a part of the assessment levied upon the land upon which the water for which such tolls or charges are unpaid was used. (Stats. 1917, p. 768.)

#### Assessment becomes a lien, when.

Sec. 40. The assessment upon real property is a lien against the property assessed from and after the first Monday in March for any year, and the lien for the bonds of any issue shall be a preferred lien to that for any subsequent issue, and such lien is not removed until the assessments are paid, or the property sold for the payment thereof. (Stats. 1897, p. 267.)

#### Tax deed evidence of what.

Sec. 48. Such deed duly acknowledged or proved is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessment by the assessor, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein free of

all encumbrances, except when the land is owned by the United States, or this state, in which case it is prima facie evidence of the right of possession. (Stats. 1897, p. 271; Stats. 1931, p. 441.)

### Redemption of bonds.

Sec. 52. Upon presentation of any matured bond or any matured interest coupon of any bond of the district, the treasurer shall pay the same from the bond fund. If funds are not available for the payment of any such matured bond or interest coupons, it shall draw interest at the rate of seven per cent per annum from the date of its presentation for payment until notice is given that funds are available for its payment, \* \* \*. (Stats. 1919, p. 667.)

#### Power to incur indebtedness restricted.

Sec. 61. The board of directors or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act.

\* \* (Stats. 1915, p. 1369.)

#### Exemption of property from taxation.

Sec. 66. The rights of way, ditches, flumes, pipelines, dams, water rights, reservoirs, and other property of like character, belonging to any irrigation district shall not be taxed for state and county or municipal purposes. (Stats. 1897, p. 276.)

#### Funds created.

Sec. 67. The following funds are hereby created and established to which the moneys properly belonging shall be apportioned, to-wit: bond fund, construction fund, general fund. (Stats. 1897, p. 276.)

## Appendix B

#### 2. INVOLUNTARY DISSOLUTION.

An act declaring the conditions upon which an irrigation district may be dissolved, prescribing the procedure therefor, and the winding up of the affairs of the district when dissolved. Approved May 18, 1919, Statutes 1919, p. 751, Amended, Statutes 1925, p. 220.

## Dissolution and disposition of property.

Sec. 3. Upon final judgment of dissolution in such action, the district in question shall be deemed dissolved and annulled. The court shall determine the amount of indebtedness outstanding against said district, including the costs of the court action herein provided for, and thereafter the appropriate county officers shall act as ex officio officers of the district: the records and papers of every kind belonging to the district shall be turned over to the proper county officers. The county treasurer shall perform the duties of the district treesurer; the county tax collector shall . perform the duties of the district tax collector; the county assessor shall perform the duties of the district assessor; the county clerk shall perform the duties of the secretary of the board of directors; the board of supervisors shall perform the duties of the board of directors; they shall proceed to levy and collect such additional taxes as may be necessary upon the lands embraced within such district in the same manner and with the same procedure for non-payment that county taxes are levied and collected for the purpose of paying such outstanding indebtedness not provided for by previous assessments. All property of every kind belonging to the district, including lands sold to the district for taxes, shall be sold as the court may direct and the proceeds together with all money on hand shall be used to pay off the indebtedness. All funds remaining after all outstanding indebtedness has been paid shall be apportioned and be paid to the assessment payers according to the last assessment roll. (Stats. 1919, p. 752.)

## Appendix C

## 3. CALIFORNIA DISTRICTS SECURITIES COMMISSION ACT.

An act creating the California Districts Securities Commission, providing for its appointment, and defining its duties and powers, relating to bonds of irrigation districts, providing under what circumstances such bonds shall be legal investments for funds of banks, insurance companies and trust companies, trust funds, state school funds and any money or funds which may now or hereafter be invested in bonds of cities, cities and counties, counties, school districts or municipalities, and providing under what circumstances the use of bonds of irrigation districts as security for the performance of any act may be authorized, providing that certain districts may be declared insolvent, and providing for the administration of insolvent districts, making an appropriation, to carry out the purposes of the act, and repealing an act entitled "An act relating to bonds of irrigation districts, providing under what circumstances such bonds shall be legal investments for funds of banks, insurance companies and trust companies, trust funds, State school funds and any money or funds which may now or hereafter be invested in bonds of cities, cities- and counties, counties, school districts or municipalities, and providing under what circumstances the use of bonds of irrigation districts as security for the performance of any act may be authorized," approved June 13, 1913, and as amended by Stats. 1931, p. 2263, and Stats. 1937, p. 491

California Districts Securities Commission created—personnel—

Section 1. There is hereby created a commission to be known as and designated the California districts securities commission, which commission shall consist of five members as follows: the attorney general, the state engineer, the superintendent of banks, and two other members to be appointed by the governor, each of whom at the time of his appointment shall be one who has had at least five years actual experience in the affairs of an irrigation district in this state as an officer or employee. The terms of office of the two members appointed by the governor shall be four years from the date of their appointment, and until their successors are appointed. Each member of the board other than the attorney general, the state engineer and the superintendent of banks shall be entitled to receive as compensation as such member, ten dollars for each day while on official business of the commission and all members shall be entitled to receive his actual necessary expenses while on such official business.

# Report of commission—limitation upon approval of bonds for certification.

Sec. 4. Such commission, upon receipt of a certified copy of such resolution, shall, without delay, make or cause to be made an investigation of the affairs of the district and report thereon in writing. If no bonds of the district shall have theretofore been certified as provided in this act or under the provisions of "An act relating to bonds of irrigation districts, providing under what circumstances such bonds

shall be legal investments for funds of banks, insurance companies and trust companies, trust funds, state school funds and any money or funds which may now or hereafter be invested in bonds of cities, cities and counties, counties, school districts or municipalities, and providing under what circumstances the use of bonds of irrigation districts as security for the performance of any act may be authorized." Approved June 13, 1913, or acts amendatory thereof or supplementary thereto, such report shall be made upon each and every detail that may in the opinion of the commission have any bearing upon the success or failure of the project about to be undertaken by the district, and every fact which will aid the commission in determining the feasibility and economic soundness of such project. If bonds of the district shall have theretofore been so certified then such report shall be upon the following points:

- (a) The supply of water available for the project and the right of the district to so much water as may be needed.
- (b) The nature of the soil as to its fertility and susceptibility to irrigation, the probable amount of water needed for its irrigation and the probable need of drainage.
- (c) The feasibility of the district's irrigation system and of the specific project for which the bonds under consideration are desired or have been used, whether such system and project be constructed, projected or partially completed.

In either case the commission shall estimate the reasonable value of the water, water rights, canals, reservoirs, reservoir sites and irrigation and power works and other property owned by the district or to be acquired or constructed with the proceeds of the bonds proposed to be issued by said district and the reasonable value of lands included within the boundaries of the district.

No bond issue of any district shall be approved for certification as provided in this act which together with any other outstanding bonds of such district including bonds authorized but not sold exceeds sixty per centum of the aggregate value of the water, water rights, canals, reservoirs, reservoir sites, irrigation and power works and other property owned by the district or to be acquired or constructed with the proceeds of the bonds proposed to be issued by said district, and the reasonable value of the lands within the boundary of the district.

#### Certified bonds are legal investments.

Sec. 9. All bonds certified in accordance with the terms of this act shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings, and trust companies and for the state school funds and whenever any money or funds may, by law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school district, or municipalities in the State of California, such money or funds may be invested in the said bonds of such districts, and whenever bonds of cities, cities and counties, counties, school

districts or municipalities may by any law now or hereafter enacted be used as security for the performance of any act, bonds of districts the der the limitations in this act provided may be so used. This act is intended to be and shall be considered the latest enactment upon the matters herein contained, and any and all acts in conflict with the provisions hereof are hereby repealed.

Sec. 11 (as amended, Stats. 1937, p. 491). Whenever any district has levied the annual assessment required by the laws of this state and when the money derived from said assessment, together with any other revenue allocated to payment of bond interest and principal, is insufficient to meet the bond interest or principal when due and said district defaults on its bond principal or interest, or both, to the extent of not less than twenty per cent (20%) of the amount due, said defaulting district may become subject to this section and to the control and direction of the commission as herein provided upon the application of such district and the approval thereof by the commission. Thereafter it shall continue subject to this section and to such control and direction during the effective period of this section unless and until the amount raised by its annual assessment as hereinafter provided, together with other revenue derived from any source and shall be sufficient to meet and pay off all matured and uncanceled or unrefunded obligations of such district, bonded or otherwise, in which event it shall cease to be subject to this section and such control and direction shall terminate so long as said district does not again default as aforesaid. Upon

receipt of written notice from any such district, the California Districts Securities Commission shall make such an investigation of the affairs of the district at the expense of the district as it may deem proper and for which funds are available in order to inform itself as to the financial affairs of the district and its lands, and to enable it to carry out the provisions of this section intelligently.

The board of directors of any such defaulting district, in levying the annual assessment of the district, may, notwithstanding Section 39 of the California Irrigation District Act or any other provision of law governing such district, levy only for such total amount as in their judgment by a finding of fact, approved by the commission it will be reasonably possible for the lands in said district, taken as a whole, to pay without exceeding a delinquency of fifteen per cent. In determining the amount it is possible for the lands to pay, at the time of each annual assessment, the board of directors shall consider the productivity of lands in the district, crops growing and to be grown during the year, market conditions, as well as they can be forecast, the cost of producing and marketing crops, and obligations of the land respecting taxes and public liens. Out of the money derived from such annual assessment the board of directors of the district may set aside such. sum as, in the judgment of the board, and approved by the commission, may be necessary, in addition to other revenue allocable to that purpose, for the operation and maintenance of said district and its works for the ensuing year. The balance of said money derived from such annual assessment shall be prorated to bond interest, bond principal and to other outstanding obligations of the district in the proportion that the total amount due on each of said items shall bear to the said balance.

Notwithstanding anything in this section contained, in any case in which an irrigation district has heretofore defaulted or shall hereafter default in the payment of its indebtedness as in this act provided, no district shall be deemed to be or have been under the control or direction of the commission as in this section defined or under the supervision or control of the commission as to the fiscal affairs of such district until and unless the commission has or shall have made its order approving a reduced assessment.

This section shall remain in effect only until the first day of November, 1939, unless sooner repealed. The legislature expressly declares that this section is intended to be applicable to all bonds, obligations and assessments of districts which have defaulted to the extent hereinbefore set forth, and the legislature expressly declares that, except as otherwise expressly provided by law, it applies, and shall be construed to apply, to all bonds now or hereafter issued and outstanding. Nothing in this section contained, however, shall be deemed to extinguish or cancel any obligation due from any district, and whenever the annual assessment, levied as hereinbefore provided, leaves matured bond principal or interest or other matured obligations unpaid, said unpaid balance shall continue as a district obligation until paid or refunded in accordance with law.

- (Sec. 2). The agricultural emergency referred to in Section 2 of Chapter 60 of the Statutes of 1933 continues to exist, and it is necessary for the same reasons that Section 11 of the act cited in the title hereof was enacted to continue the section in effect until November, 1939.
- (Sec. 3). Nothing in this act contained shall be applicable to refunding bonds of any irrigation district issued under or pursuant to a plan of readjustment submitted to and confirmed by any United States District Court in any proceedings under the Federal Bankruptcy Act, as amended, or any plan of readjustment submitted to and confirmed by any court of competent jurisdiction under any law of the State of California, and such refunding bonds shall be payable, as to both principal and interest, from assessments levied and collected in accordance with the terms of said bonds and the plan of readjustment pursuant to which the same are or are to be issued, anything in this act to the contrary notwithstanding.

## Appendix D

#### ENABLING ACT.

"An act in relation to relief from special assessments and in relation to financial relief therefrom, and of taxing districts, as defined in Chapter IX of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended, validating petitions and proceedings under or in contemplation of proceedings under, said Chapter IX, and authorizing contribution by cities and counties toward the payment of such assessments, and declaring the urgency thereof, to take effect immediately."

Section 1. For the purpose of this act a "taxing district" as described in Chapter IX of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," as approved July 1, 1898, and as amended by the addition thereto of Chapter IX, approved May 24, 1934. Said act of Congress and acts amendatory and supplementary thereto, as the same may be amended from time to time, are herein referred to as the "Federal Bankruptcy Statute."

Sec. 6. No final decree or order of the United States District Court confirming a plan of readjustment shall be effective for the purpose of binding the taxing district unless and until such taxing district files with the court a certified copy of a resolution of such taxing district, adopted by it or by the officials referred to in section 2 hereof, consenting to the plan of readjustment set forth or referred to in such final decree or order.

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OHANCES ELMONE OROP

IN THE

# Supreme Court of the United States

No. 757

Остовив Тевм, 1937

THE UNITED STATES OF AMERICA,
Appellant,

V.

MILO W. BERLES and REED J. BERLES, as Trustees appointed by the Will of Martin Bekins, deceased, et al.

BRIEF AS AMICI CURIAL IN SUPPORT

Cart D. Lands,
Attorney General of Phorida
Grans J. Parranson,
Special Counsel.

# INDEX AND SUMMARY

Brief of Cary D. Landis, Attorney General of Florida and Giles J. Patterson as Amici Curiae.

ARGUMENT	
U. S. C. A. Title 11, Chapter 10, Sections 401-403, is a valid, uniform bankruptcy act and does not invade the reserved powers of the States and is constitutional for the following reasons:	
1	
That the purpose and intent of Congress was to enact a statute that was different from the one held void	*

a statute that was different from the one held void	
by this Court in the case of C. L. Ashton, et al. v.	. 1
Cameron County Water Improvement District No 1, 298 U. S. 513	. 3
1, 200 0. 5. 610	

That the present	statute	differs in	material	particulars	
from the act he	eld void	************		••••••	

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That these	differences	are vital.	fundamental	and far-
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	al in the As			************

## CITATIONS

-	C. L. Ashton v. Cameron County Water Improve-	
	ment District No. 1, 298 U. S. 513, 80 U. S. (L. ed.)	
	1309	2
2	Bank v. Moyses, 186 U. S. 181, 46 U. S. (L. ed.) 1113	10
	Kinkhand v J Recon & Song 230 Fed 362	13

4.	Nassau Smelting and Refining Works v. Bright-	4
	wood Bronze Foundry Company, 265 U. S. 267, 68	
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D.	in he heiman v.	. Freediander,	, r-ederal Cases	111019	12
6.	United States v.	Brown (8)	TOTAL ALBERTANCE TRANSPORT		-
	TITAL AND TITAL				1225

7.	Wright	v. V	inton	Branch,	300	U.	8.	440,	81	U.	8.	
	(L. ed.)	736		······	******	*****				*****		3

# Supreme Court of the United States

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Остовев Тевм, 1937

THE UNITED STATES OF AMERICA,

Appellant,

MILO W. BEKINS and

REED J. BEKINS, as Trustees appointed by the Will of

Martin Bekins, deceased, et al.

On Appeal from The United States District Court for the Southern District of California, Northern Division.

# BRIEF OF AMICUS CURIAE

This brief being filed by Amicus Curiae will not attempt a statement of the case. It is confined solely to a discussion of the constitutionality of the statute. As the decision

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of the District Judge that the statute is unconstitutional rested solely upon his conclusion that the present act could not be distinguished in point of substance from the Act of Congress held void in the case of Ashton v. Cameron District, etc., we shall confine the brief narrowly to a discussion of this one point. It is our position that H. R. 5969 is not subject to the condemnation that was visited by the Supreme Court upon Chapter 186 of April 10, 1936. In fact, we submit that it can be almost mathematically demonstrated that the present statute not only was drawn in the light of that decision and eliminated the unconstitutional features of that act, but that the changes made in the act are substantial, material and vital, and eliminate any possible interference with the sovereign power of taxation of a State or with any taxing district's control over its fiscal affairs.

We assume for the purpose of this discussion the correctness of the reasoning of the majority epinion in Ashton v. Cameron County Water Improvement District No. 1, 298 U. S. 513, and also its conclusion that the former statute "might materially restrict the district's control over its fiscal affairs and was therefore void." We also assume as a predicate, the admission in both the majority and minority opinions that the former statute was "adequately related to the general subject of bankruptcy." In this way the legal argument herewith presented is confined to a narrow issue. In order to present it we therefore submit:

1. That the purpose and intent of Congress was to enact a statute that was different from the one held void.

2. That the present statute differs in material particu-

lars from the act held void.

3. That these differences are vital, fundamental and far-reaching and eliminate entirely the reason given by the Supreme Court for holding the former act unconstitutional.

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That the Purpose and Intent of Congress was to Enact a Statute That was Different From the One Held Void.

The brief of the government refers to the decision of this Court in Wright v. Vinton Branch 300, U. S. 440, 81 L. Ed. 736, and to the report of the Judiciary Committee of the House, Pages 76 and 77. The testimony that was taken at the hearing before the Sub-committee of the Judiciary Committee of the House of Representatives, especially statements of Mr. Wilcox, author of the act, on pages 128 and 129, support the conclusions of the committee.

#### SECOND

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That the Present Statute Differs in Many Material Particulars From the Act Held Void.

The distinction between the present statute and Section 80, which was held void, is apparent from the differences in terminology and in form. Section 79 of the former act provided that in addition to the jurisdiction in bankruptcy the court should

"exercise original jurisdiction in proceedings for the relief of debtors as provided in this chapter of this title."

Section 80 and its various subdivisions follow in a general way the provisions of Section 77 (a) and 77 (b) relating to railroad and general corporate reorganizations and readjustments. In Sub-section (a) of Section 80 the proceeding, when filed, is referred to as a petition to "effect a plan of readjustment of its debts." Throughout the statute the words "Plan of Readjustment" are repeatedly used. Such a plan under Sub-section (b), Section 80, might

include provisions "modifying or altering the rights of creditors generally" or, any class of them secured or unsecured, either through the issues of new securities of any character or otherwise, and might contain such other agreements and provisions not inconsistent with the chapter as the parties desired. Sub-section (c), which dealt with procedure also differed materially from the present statute. It authorized the Judge to require the district to file

"such schedules and submit such other information as may be necessary to disclose the conduct of the affairs of the taxing district and the fairness of any proposed plan."

It authorized the rejection in whole or in part of executory contracts. It required the taxing district to open its books for inspection by creditors, and that,

"the taxing district shall be heard on all questions."

Sub-section (e) authorized changes and modifications of the plan of readjustment and Sub-section (g) relieved the district "from debts and liabilities dealt with in the plan except as provided in the plan." When these broad provisions are read in connection with Sections 77 (a) and 77 (b), the statement of Justice McReynolds in the majority opinion in Ashton vs. Cameron County that,

"our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted. And it is of the first importance that due attention be given to the results which might be brought about by the exercise of such a power in the future,"

assumes greater importance. We interpret this as laying stress more upon what the statute might be construed to authorize in other cases than upon the particular purpose sought to be accomplished in the case then before the court. of & U. tive firs jari thou the

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when whice sche duct The present statute avoids the use of these broad and sweeping provisions and, while it is reminiscent of the form of Section 80, it is patterned more after Section 30, Title 11, U. S. C. A., than after Section 77 (a) and 77 (b). Illustrative of this fact is the use of the word "composition". The first sentence of Section 81, gives a court of bankruptcy jurisdiction "for the composition of indebtedness of or authorized by any of the taxing agencies or instrumentalities" therein named. The term "composition" is used throughout the entire statute.

Admittedly a change in terminology is not controlling but should be considered in connection with the purpose of the authors of the act. The word "composition" has come to have a very definite meaning as applied to proceedings in bankruptcy courts. It was first adopted in England and later became a part of the National Bankruptcy Act of 1874. It was included in the Bankruptcy Act of 1898 as amended by Chapter 412, Acts of June 25, 1910. The phrase "Plan of Readjustment" was first used in Sections 77 and 77 (b) and its meaning is necessarily associated with proceedings under those sections in the same way that the meaning of the word "composition" is associated with proceedings under Section 30, Title 11. Terminology in a statute is always important when we seek to construe its meaning and purpose, unless the effect of the statute be inconsistent with the terminology employed.

The effect of a "composition" in bankruptcy and the validity of the statute authorizing compositions has been repeatedly before the courts, and its extent is well defined.

Section 80 was subject also to the claim that under it the court was authorized to pass upon the Plan of Readjustment. Although the phraseology of sub-section (e), Section 80, is similar to that of subdivision (e) of Section 83, yet when read in connection with subdivision (c) of Section 80, which authorized the court to require the district to file schedules and submit other information to disclose the conduct of its affairs and the "fairness of any proposed plan",

it appeared that the court was authorized to determine the ability of the district to pay its creditors, and to refuse to approve a plan, if on its face it appeared that the district was offering less than it was able to pay. The requirement that the plan should be a fair one is analagous to the construction which the Federal Courts had placed upon the present Frazier-Lemke Act requiring that the plan shall be in good faith. The construction of this language requires a plan reasonably calculated to effect the liquidation of the debt. Section 83 omits the provision for filing schedules to show the fairness of the plan. Its fairness is to be determined as the fairness of compositions offered under Section 30, Title 11.

Another vital distinction between the two statutes appears in sub-section (a), Section 80, as applied to drainage districts, reclamation and levee districts. In such district the act required the consent of only 30% of the creditors in order to file a petition. Compositions inherently arise only from the agreement between the debtor and a majority of its creditors.

Section 83 requires the written consent of a majority in amount in drainage districts as in all other cases.

Another essential difference between the two statutes is found in sub-section (c), Section 80, which authorizes the court by interlocutory decree to declare the plan temporarily operative and to authorize postponement or extension or readjustment of the payment of principal or interest in the manner proposed in the plan, as well as to stay all pending suits until after the final decree. Section 83 conditions this authority by saying that it shall not apply "where rights have become vested". This exception, while apparently small, expressly protects the rights of persons holding judgments upon which a preemptory writ of mandamus has been issued, who in United States v. Brown, are held to have acquired vested rights. Since neither statute contemplates the appointment of a Trustee in Bankruptcy to recover preferences, the distinction is important. A plan of read-

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instment would contemplate taking away from creditors rights which had become vested. Under the present statute such rights are not interfered with. The distinction made by the Supreme Court in Wright v. Vinton, supra, between the original Frazier-Lemke Act and the amended act illustrate the importance which this court attaches to the protection of vested rights, even in a bankruptcy statute. The fact that the statute does not expressly describe vested rights is not material. In Louisville Joint Stock Land Bank v. Badford, this court held that a bankruptcy statute could not deprive mortgagees of their vested rights, but in Wright v. Vinton, supra, the amended act was held valid because it did not attempt to do so.

Probably the most important difference between Section 30 and Section 83 is found in the provisions of sub-section (f) of the present statute. No such provision was contained in Section 80. The court can enter only an interlocutory decree of confirmation until the debtor shall have deposited with the court, or, with such disbursing agent as the court may appoint or otherwise made available to its creditors. the moneys, securities or other consideration to be delivered to the creditors under the terms of the composition. The bankruptcy statutes have always required the consideration for the composition to be deposited in the court. Under Section 80 the court might find itself unable to enforce the plan of readjustment even after the taxing district and the creditors had complied with the terms of the statute and final decree of confirmation had been entered. There was no way in which the district court could compel the taxing district to carry out the terms of the Plan of Readjustment which had been approved. If the statute had been construed to compel compliance with the plan by the taxing district an order requiring the same would have clearly infringed the power of the State to control its own political subdivition. It would have been in the nature of an order for aperific performance effective only by mandatory decree. As the Plan of Readjustment contemplated the issue of new securities, the court would have had to require the passage of resolutions necessary to authorize their issue, the printing, signing and sealing of the same, as well as the delivery of them. Such order would have clearly controlled the powers of government of the local community. The act in such a situation would have permitted the Federal Court to interfere with the taxing district's management of its own fiscal affairs. Under the present statute no such situation can arise. The order finally confirming composition cannot be made until the securities, moneys or other consideration for the composition has been placed under the control of the District Judge. He can make distribution of them to the creditors and thus render the final decree conclusive against the rights of all creditors. The court itself can deliver to those who have accepted the composition their proportional part and hold for the account of those who have not accepted the proportion which they are entitled to receive. ed dinderes when addition miles college to serve

This deposit of the consideration for the composition gives to the court the rem and renders the act analogous to all bankruptcy, admiralty and other statutes where the jurisdiction of the court depends upon the court's possession of the rem. In fact, jurisdiction of bankruptcy proceedings generally is sustained largely upon possession of the rem which it can distribute. A discharge in bankruptcy does not affect the rights of creditors, but merely the remedies which they possess.

Next, let us consider whether the statute differs from Section 30. First, it differs to the extent that no final decree of adjudication of bankruptcy and sale of assets can be made. Thus much is admitted. Second, it requires the consent and acceptance by a majority of all creditors rather than a majority in number and amount. Third, the offer of composition is made and accepted before the petition is filed. Fourth, under the Uniform Act a composition can be offered only after the bankrupt has been examined in court. None of these differences relate to the constitu-

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a state district nal question here considered, unless it be assumed that cause an adjudication in bankruptcy cannot be entered, proceeding for composition is not a statute relating to akruptcy.

The majority opinion in the Ashton case held the statute a whole unconstitutional; and not because of any speceprovision. The majority opinion said that it was not essary "to consider the act in detail as the evident intended of it was to authorize the Federal Court to require the jecting creditors of a public corporation to compromise, the down or repudiate its indebtedness without surrender the debtor of its property." It held further Section 8, ticle I, of the Constitution of the United States

"is impliedly limited by the necessity for preserving the independence of the States."

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"its (the taxing district's) fiscal affairs or those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution."

d, concluded that

"as application of the statutory provisions now before us might materially restrict respondent's control over its fiscal affairs"

trial court rightly declared the statute invalid. The purpose of the present statute and its provisions initely and conclusively show that under no circumnees does it authorize a Federal Court to control or infere with the fiscal affairs of districts and that the operan of the statute can in no sense of the word impinge n or affect in the slightest degree the independence of tate or the exercise either by the State or its taxing ricts of the sovereign power of taxation.

The fact that the statute does compel objecting creditors to compromise, scale down or repudiate the indebtedness owing to them and that such may be compelled even "without surrender of property" by the municipality, is of no consequence as such is the effect of Section 30, Title 11, of the Uniform Bankruptcy statute upon the debts of individuals.

It is our contention therefore that even if the former actwas subject to criticisms made of it, the present statute is not subject to the same infirmities. The brief filed by the government, pages 25-33, reviews the history of bankruptcy legislation and the statutes which this court has held come within the meaning of the constitutional power of Congress. Hanover National Bank v. Moyses, 186 U. S. 181. This court in its opinion in the Ashton case assumed that the act there considered related to the subject of bankruptcies. Even assuming that it did, it was held unconstitutional because it might have authorized Federal Courts to interfere with the independence of State authorities and the exercise by the State and its subdivisions of their powers. The authors of the present act in drafting the same therefore have assumed that if this statute does not interfere with the State's sovereign power of taxation or the management by the local subdivision of its own fiscal affairs, it is valid in the absence of other constitutional defects. It is necessary here to anticipate a claim that Section 8 was ipso facto not intended to apply to taxing districts, merely because it had never been applied. fact that Congress has not heretofore extended bankruptcy statutes to State taxing districts is explained by the fact that conditions have not heretofore warranted such an extension. As Section 8 authorizes statutes relating to bankruptcy, any statute which relates thereto and does not violate some other provision of the Constitution, express or implied, such as the implied limitation arising out of the dual form of government, is necessarily valid.

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# The Differences Between Section 80 and Section 83 Are Fundamental.

The very theory of a composition as it has been outlined y this court and the Courts of Appeals, especially in the pinions of the latter which have been cited with approval and quoted in decisions of this court, contemplates the settleaent, compromise or scaling down of debts as a result of an greement or contract between the debtor and the majority f its creditors. It contemplates retention by the debtor of he possession of his estate. A court in approving a comosition is not concerned with the amount of the considertion so long as there is no discrimination between credtors of the same class; no special inducements are offered reditors to consent, and no fraud is practiced by the debtor r consenting creditors upon the non-consenting. The conideration for the composition need not consist solely of ash, but may be represented in new notes, secured or unecured, stock or other evidences of indebtedness. The onsideration must be deposited with the court and held y it for the benefit not only of consenting creditors but f the dissenting creditors as well upon a pro rata basis. When confirmed the debtor is discharged to the same exent as he would be by an adjudication and discharge may e pleaded as a release against any subsequent action rought upon the original obligations. In fact, this court as repeatedly held that a composition "originates in a oluntary offer by the bankrupt, and results in the main, rom volutary acceptance by his creditors." Nassau Smeltag & Refining Works v. Brightwood Bronze Foundry ompany, 265 U.S. 267, 68 L. Ed. 1013. That

"the will of the majority of creditors is enforced upon the minority provided the decision of the majority is approved by the court, except for this coercion of the minority the interference of a court of bankruptcy would hardly be necessary." And again it said no to nother menual accurrently sell

"it is a proceeding voluntary on both sides by which a debtor of his own motion offers to pay his creditors a certain percentage of their claims in exchange for release from his liabilities. The amount there may be less or more than would be realized from distribution in bankruptcy."

The effect of the composition proceeding is to substitute the composition for hankruptcy, and in a measure to supersede the latter proceeding and to reinvest the bankrupt with all of his property free from the claims of his creditors.

In Re Reiman v. Freedlander, Federal Case 11673, decided under the statute of 1867 authorizing a composition, sustained the validity of such section, because the composition accomplished the end of bankruptcy, namely, "a substantial appropriation of the existing property of the debtor towards all the debts due by him," and because the proceedings previded for "a pro rata payment on the debts (not) only of those creditors who proved their debts, but of all creditors ought to have a payment pro rata." A composition restores to the bankrupt his estate and frees him from all of his debts, reinvesting title to his property in him. When a composition is confirmed, jurisdiction and control of the bankruptcy court ceases, unless expressly retained for the purpose of carrying out special terms of the composition, or to the extent it may be necessary to restore to the bankrupt any assets taken from him. The present statute, Sec. 83, leaves the debtor in possession of its assets. By its terms it releases the debtor from liability on its original debts and upon the distribution of the consideration by the court its jurisdiction terminates. Final decree is binding upon all creditors who have not filed, as well as upon those who have. Sub-section (f.) Remington on Bankruptcy, Vol. 7, 1934, Edition, Section 3092, says that it was the intention of Congress to make it possible for the bankrupt to obtain a composition "on the strength of depositing something else than money". The Circuit Court

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statute

Appeals in Kinkead v. J. Bacon & Sons, 230 Fed. 362, d that consideration for a composition

"may or may not be cash. A bankrupt usually does not have enough ready money of his own to carry out a composition. The consideration to be paid may be the bankrupt's notes, secured or even unsecured, or his mere promise to pay in the future a given amount." Citing 2 Loveland on Bankruptcy (4th Ed), p. 1264. See also In Re Kinnane (D. C.), 221 Fed. 762.

Not only does the statute not interfere with the State's wer of taxation or the power of a local taxing district to nage is own affairs, but it actually makes it possible for district to manage its own affairs. The condition which fronts cities, towns and other taxing districts, whose intedness is in default, principal or interest or both in large ns, is not necessarily an inability to pay ultimately, but inability to meet its obligations currently. In order to its debts properly it must have time and it must be able maintain its governmental functions, otherwise its ability collect taxes in the future will be definitely impaired. rticularly is it important to realize that there is no limiion upon the amount of tax that can be levied, either governmental purposes or for the payment of debts, uns the statute imposes specific limitations. With an united power of taxation pledged for the payment of debts the necessity for exorbitant annual recurring levies reting from an accumulation of past due obligations, pled with the necessity which confronts a taxing diset which is required by writs of mandamus to levy taxes them, even though such writs be tempered by a distribun of over a period of years—the district soon finds itself ble to collect them. When the tax is out of all proporto the ability of property to respond, the district is . ble to meet even its necessary recurring charges for govmental purposes. The writs require the performance of ditions which in their very nature are impossible. This ute permits the taxing district to arrange its affairs in

an orderly fashion by postponing the maturity of interest or principal, or both, and permits it to take advantage of lower interest rates which the majority of its creditors agree to accept because of local conditions or because the prevailing rate is lower. It furnishes a practical and useful vehicle that will help to preserve the integrity of local governments. It will prevent situations like those which occurred in the middle west, where debts remain unpaid for thirty and forty years. Meanwhile the counties and cities found it impossible to perform their governmental functions. The fact that the statute may authorize a reduction even in principal does not differentiate it from other compositions under Section 30. In fact, this is its very purpose.

The acceptance of a composition provided a sense of security to property owners against confiscation of their property under exorbitant tax levies. This cannot be furnished in any other way. In fact, a composition carried through will necessarily in time reestablish the credit of local subdivision and enable it to borrow money to meet its future needs. The history of other subdivisions in the middle west which defaulted during the 1870's and 1880's and settled with their creditors demonstrates this statement.

That the act operates to deprive non-consenting creditors of the right to enforce the levy of taxes without limit under writs of mandamus issued, does not interfere with the State's power of taxation or control of local fiscal affairs. It operates only to limit the remedies of creditors; it merely enforces the will of a majority of the creditors upon the dissenting minority. We call attention to sub-section (i), Section 83, to substantiate the fact that the statute does no interfere with the governmental powers of a local subdivision.

Approval of a composition under the present act, unless the dissenting creditors make it appear that the debtor's consenting creditors have received special consideration or, that the plan discriminates unfairly against a group or a class, or destroys liens or other vested rights, will operate in substantially the same way that Sec. 30, Title 11, operates. ceed tion credi orde credi is of the S

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The acceptance of the plan by a majority gives to the proceeding prima facie support of its fairness and confirmation merely enforces the contract between the majority creditors and the debtor against the dissenting minority in order to protect the debtor in its efforts to reestablish its credit and maintain the functions of government which it is obliged to perform for the benefit of its citizens under

he State's grant of power to it.

The fear expressed in the majority opinion in the Ashton ease that the act might be amended to provide for involunary proceedings is not justified now if the former decision of this court is adhered to. An involuntary proceeding would unquestionably interfere with the State and taxing listricts' independence. The mere fact that the Federal Courts have held that in the absence of a statutory grant hey have power by writs of mandamus to compel taxing listricts to levy taxes to pay judgments rendered against hem is of itself a sufficient reason to justify Congress eliminating the use of such power where the majority of the reditors prefer to agree upon a method which will provide or orderly liquidation of debts. Acceptance of the conideration, if in new securities, does not give to creditors emedies which they would otherwise not possess. For the inforcement of them they must look to the remedies auhorized by law at the time that they are issued. ssumption of jurisdiction by the court and its approval of he composition does not extend its power to enforce the new ecurities. This has been repeatedly held by Federal Courts inder Section 30. Final decree of confirmation and disribution of the securities terminates the jurisdiction of the ourt. Thereafter the creditors all relegated in the event f future default or breach of the new contracts to their emedies in other forums. CARY D. LANDES

Attorney General of Florida.

Special Counsel.

## FILE COPY

# In the Supreme Court - Supreme Court, U. S

OF THE

United States

APR 4 1938

CHARLES ELMORE OROPLEY.

OCTOBER TERM, 1937

THE UNITED STATES OF AMERICA,

Appellant,

VS.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

No. 757

LINDSAY-STRATHMORE IRRIGATION DISTRICT,
Appellant,

VS.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

No. 772

Appellees.

# MOTION AND BRIEF OF WEST COAST LIFE INSURANCE COMPANY AS AMICUS CURIAE.

FRANCIS V. KEESLING,
De Young Building, San Francisco, California,
Counsel for West Coast Life Insurance
Company As Amicus Curiae.

CHARLES L. CHILDERS,

American Bank Building, El Centro, California,

Of Counsel.

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# In the Supreme Court

OF THE

### United States

OCTOBER TERM, 1937

THE UNITED STATES OF AMERICA,

Appellant,

VS.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

VS.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

No. 772

No. 757

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May it please the Court:

The undersigned, as counsel for West Coast Life Insurance Company respectfully moves this Honorable Court for leave to file the accompanying brief in this case as Amicus Curiae.

Dated, San Francisco, California, March 28, 1938.

Francis V. Keesling,
Counsel for West Coast Life Insurance
Company As Amicus Curiae.

CHARLES L. CHILDERS, Of Counsel.

# In the Supreme Court

OF THE

### United States

OCTOBER TERM, 1937

THE UNITED STATES OF AMERICA,

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MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

V8.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

No. 772

No. 757

BRIEF OF WEST COAST LIFE INSURANCE COMPANY
AS AMICUS CURIAE.

#### PRELIMINARY STATEMENT.

Amicus Curiae, West Coast Life Insurance Company, is an insurance corporation, as its name implies, having its principal place of business in the City of San Francisco.

By Act of the Legislature of California, approved June 13, 1913 (Stats. 1913, p. 778) Bonds of Irrigation Districts are, after the proceedings therein provided for, made available for investment of trust funds and for the funds of insurance companies and others. That act, as amended, is now known as the "California District Securities Commission Act" and is referred to as Act No. 3857a Deering's General Laws of California, 1931, page 2013.

Pursuant to the foregoing authority Amicus Curiae has purchased and is the owner of bonds of a number of California Irrigation Districts. Among the districts, whose bonds are so held and owned by Amicus Curiae, is Merced Irrigation District, which District is formed and exists under the same law under which the Appellant is formed and exists. Amicus Curiae is the owner of \$100,000 principal amount of the bonds of Merced Irrigation District. Merced Irrigation District brought a proceeding under Chapter IX. of the Bankruptcy Act which proceeding was resisted by Amicus Curiae among others. That proceeding was tried in the United States District Court, appealed to the Circuit Court of Appeals for the Ninth Circuit, and the proceeding was dismissed following the decision of this Court in the Ashton-case. Certiorari was denied by this Court October 17, 1937.

At a session of the Legislature of California in 1937, an act was passed known as the Irrigation District Refinancing Act. Merced Irrigation District has commenced and has pending in the Superior Court of the State of California, in and for the County of Merced, an action endeavoring to accomplish a similar purpose under this new act of the State. Amicus Curiae has appeared in and is resisting that action.

Amicus Curiae is also the owner of \$45,000 principal amount of the bonds of South San Joaquin Irrigation District, which District is formed and exists under the same act under which the Appellant is formed and exists. South San Joaquin Irrigation District also attempted to avail itself of the provisions of Chapter IX. of the Bankruptcy Act and now has pending in the Superior Court of the State of California, in and for the County of San Joaquin an action under the Irrigation District Refinancing Act, above referred to, in which action Amicus Curiae is appearing in opposition to the claims of the District.

It is thought likely that the bonds of the several irrigation districts in California and other western states, owned and held by Amicus Curiae, will be greatly affected by the decision of the Court in this case.

#### SUMMARY OF ARGUMENT.

#### Point A:

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Chapter IX. of the Bankruptcy Act, held by this Court to be unconstitutional, is not dissimilar, so far

as its constitutional sufficiency is concerned, from Chapter X. now before the Court in this case.

#### Point B:

Among the many important questions involved on this appeal aside from the similarity between Chapter IX. and Chapter X. of the Bankruptcy Act, we desire to address ourselves to what we conceive to be the one controlling question, and that is: Has Congress the power under the constitution to fasten upon an irrigation district in California a bankruptcy measure of any kind.

In arriving at the correct answer to that question we submit:

- (1) That the powers of Government are divided between the several states and the United States. That the powers delegated to the United States are sufficient in themselves and may be exercised by the United States without any control or hindrance by the States and on the other hand the powers reserved to the states may not be interfered with by the United States.
- (2) If the bankruptcy power includes the state and state agencies, then that power may be exercised without the consent or even over the protest of the state.
- (3) The bankruptcy clause, like the taxing clause, is couched in general language and since the exercise of the bankruptcy power over the state and the state agencies would tend to destroy the independence of the state, it will not be supposed that the framers of

the constitution intended by the use of the general language used to confer that power upon the United States any more than it has been supposed that the framers of the constitution intended either the state or the United States to tax the other.

- (4) Since the United States has no power to tax the state and its agencies, it likewise, by the same reasoning, has no power to apply a bankruptcy measure to the state or its agencies.
- (5) From the history of the constitution and laws as they existed at the time the constitution was adopted and from the nature of the case it is apparent that the bankruptcy clause was not intended to apply to the state or its agencies.

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- (6) That the application of the bankruptcy power to the state and its agencies would amount to a weapon of destruction and if the power to create such weapon exists, whether the power is used or not, the state and its agencies would necessarily suffer under the ever present threat.
- (7) The irrigation district in California is a governmental agent of the state. That being so, if a bank-ruptcy measure can be applied to the irrigation district it can likewise be applied to the state itself.

#### ARGUMENT.

#### POINT A.

THIS ACT IS NOT MATERIALLY DIFFERENT FROM THE ONE ALREADY HELD TO BE UNCONSTITUTIONAL.

There seems to be but one, if any, substantial difference, so far as the character and purpose of the acts are concerned, between Chapter X. now before the Court, and Chapter IX. heretofore declared to be unconstitutional in Ashton v. Cameron County Water Improvement District No. 1, 298 U.S. 513.

By subdivision (b) of Section 80 (Tit. 11, Sec. 303 U.S.C.A.) (held to be unconstitutional) it is provided:

"A plan of readjustment within the meaning of this chapter (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; and (2) may contain such other provisions and agreements, not inconsistent with this chapter, as the parties may desire."

By Section 83 (Tit. 11, Sec. 403, U.S.C.A) (now before the Court) it provided:

"The 'plan of composition,' within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either to issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire."

Originally the thing to be done was called a "readjustment". Now the same thing is to be done, but it is called "composition". It seems to be supposed that there is some merit in these particular labels, even though they use different words for exactly the same thing.

We are persuaded that this Court is more interested in what is to be done under the Act or what may be done under the Act than it is in what the Act or the several steps under it may be called.

If this Act provides for a "composition" and not an "adjustment", then the former Act provides for a "composition" and not an "adjustment", and, after all, it is quite immaterial whether it is called "composition" or is called "adjustment" or called by any other name. It originates, exists and has its being, if at all, under the bankruptcy clause of the constitution and not elsewhere.

#### POINT B.

#### CHAPTER X OF THE BANKRUPTCY ACT IS NOT AUTHORIZED BY THE CONSTITUTION.

It is respectfully suggested that the United States, through the Congress, does not have power under Clause 4, Section 8, Article I. of the Constitution to enact any bankruptcy measure that will apply to a state or any of the governmental agencies of a state. The whole of the bankruptcy power is found in this clause of the Constitution. If the power is not conferred by this clause of the Constitution, then the power does not exist.

## (1) DIVISION OF POWERS BETWEEN UNITED STATES AND THE STATES.

It is well established that the United States is a government of delegated powers. Within the powers delegated by the Constitution the United States is sovereign and supreme, and those powers may be exercised by the United States upon the states and the people of the United States free and unhindered. As to all power not thus delegated or reserved to the people, the state is equally supreme—the state is sovereign. The state within its field—that is, within the field of powers not delegated by, or prohibited to it, by the Constitution—is as complete and independent of the United States as if it were a foreign and independent power.

In United States v. Butler, 297 U. S. 1, 63, this Court, by Mr Justice Roberts, stated the rule as follows:

" \* \* It hardly seems necessary to reiterate that ours is a dual form of government; that in every state there are two governments,—the state and the United States. Each state has all governmental powers save such as the people, by their Constitution, have conferred upon the United States, denied to the States, or reserved to themselves. The federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted. \* \* \* "

#### Also:

(68) "From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted,

In White v. Hart, 13 Wall. 646, 650, this Court said:

"" \* The government of the nation and the government of the states are each alike absolute and independent of each other in their respective spheres of action; " \* \* "

See, also:

Brush v. Commissioner, 300 U. S. 352, 364; South Carolina v. United States, 199 U. S. 437, 452;

Lane County v. Oregon, 7 Wall. 71, 76.

(2) WHERE A POWER HAS BEEN DELEGATED TO THE UNITED STATES THE UNITED STATES IS SUPREME.

Where power is delegated to the United States by the Constitution, that power may be exercised by the United States as that government may determine.

This principle was laid down early in the history of the country by Mr. Chief Justice Marshall in the case of M'Culloch v. Maryland, 4 Wheat. 315, 424, where he said:

"No trace is to be found in the Constitution of an intention to create a dependence of the government of the Union on those of the States, for the execution of the great powers assigned to it. Its means are adequate to its ends; and on those means alone was it expected to rely for the ac-

complishment of its ends. To impose on it the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments which might disappoint its most important designs, and is incompatible with the language of the constitution. \* \* \* "

See, also:

In the Matter of Quarles, 158 U.S. 532, 535.

We thus see that if Congress is empowered by the Bankruptcy Clause to extend a law on the subject of bankruptcies so as to include a state or its agencies; then it may do so in such way as Congress alone may determine. If Congress may authorize a voluntary bankruptcy proceeding by the governmental agent of a state it may likewise authorize an involuntary bankruptcy proceeding against the governmental agent of the state and without the consent or even over the protest of the state. If it may apply such a measure, voluntary or involuntary, by or against the governmental agent of the state, it may apply such a measure to the state itself. It is wholly a question of power.

# (3) THE BANKEUPTCY CLAUSE, LIKE THE TAXING CLAUSE IS COUCHED IN GENERAL LANGUAGE.

It will be observed that the Bankruptcy Clause is stated in general language.

It is a familiar rule of construction that general statutory language does not apply to the sovereign to his disadvantage.

In Guarantee Title & Trust Co. v. Title Guaranty & Surety Co., 224 U. S. 152, 155, the Court reviewed authorities and said:

"The decision was expressly put upon the ground 'that the sovereign authority of the country is not bound by the words of a statute unless named therein, if the statute tends to restrain or diminish the powers, rights, or interests of the sovereign.' There was much reasoning to sustain the proposition, and it was especially applied to discharges in bankruptcy. Expressing the general assent to the proposition announced, the Court said:

"Greater unanimity of decision in the courts or of views among text writers can hardly be found upon any important question than exists in respect to this question in the parent country, nor is there any diversity of sentiment in our courts, Federal or State, nor among the text writers of this country."

See, also:

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United States v. Thompson, 98 U. S. 486, 489; Marshall v. New York, 254 U. S. 380, 382.

This rule was recognized in the Colonies and passed on from the Colonies to the new states. The sovereignty being reserved to the state, each of the states possesses the prerogatives of a sovereign, one of which is that the sovereign is not bound by general language which works to his disadvantage. Since a bankruptcy law which would subject the fiscal affairs of the state to an involuntary proceeding would not only be to the disadvantage of the sovereign state, but could actually destroy the independence of the state,

it seems impossible to conceive that the states, or the people in their sovereign capacity, intended, by the general language of the Bankruptcy Clause, that the independence of the state should thus be put in jeopardy.

#### (4) UNITED STATES HAS NO POWER TO TAX THE STATE.

In Buffington v. Day, 11 Wall. 113, 126, it is said:

"The supremacy of the general government, therefore, so much relied on in the argument of the counsel for the plaintiff in error, in respect to the question before us, cannot be maintained. The two governments are upon an equality, and the question is whether the power 'to lay and collect taxes' enables the general government to tax the salary of a judicial officer of the state, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the laws, and which concerns the exercise of a right reserved to the states?

establishment of the judicial department, and the appointment of officers to administer the laws, being among the reserved powers of the state, disables the general government from levying the tax, as that depends upon the express power 'to lay and collect taxes,' but it shows that it is an original inherent power never parted with, and, in respect to which, the supremacy of that government does not exist, and is of no importance in determining the question; and further, that being an original and reserved power, and the judicial officers appointed under it being a means or instrumentality employed to carry it into effect, the

right and necessity of its unimpaired exercise, and the exemption of the officer from taxation by the general government stand upon as solid a ground, and are maintained by principles and reasons as cogent as those which led to the exemption of the Federal officer in Dobbins v. The Commissioner of Erie, from taxation by the state; for, in this respect, that is, in respect to the reserved powers, the state is as sovereign and independent as the general government. And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are, necessarily, and, for the sake of self preservation, exempt from taxation by the states, why are not those of the states depending upon their reserved powers, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

See:

Rose's Notes, this case.

The Buffington case is a leading authority upon the subject of the right of the United States to tax an agency or instrumentality of the state, and it is interesting to note that this Court uses the strong language used in the Buffington decision regarding the right of the United States to tax an officer of the state notwithstanding the constitutional provision: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises \* \* \* " (Art. I, Sec. 8, Cl. 1.) This language is by its terms unlimited. The language, however, is general. The state in the exercise of its reserved powers is sovereign. To tax the state would be to its disadvantage. The exemption is necessarily implied.

## (5) BANKEUPTCY CLAUSE WAS NOT INTENDED TO APPLY TO A STATE.

What the people meant by the general language used in the Bankruptcy Clause can best be determined by putting ourselves as nearly as possible in the position they occupied at the time the Constitution was approved; in other words, by an understanding of the state of the law as it then existed.

This Court stated in the case of Continental Ill. Nat. Bk. & Trust Co. v. Chicago-Rock Island & Pacific Ry. Co., 294 U.S. 648, 668:

"The English law of bankruptcy, as it existed at the time of the adoption of the Constitution, was conceived wholly in the interest of the creditor and proceeded upon the assumption that the debtor was necessarily to be dealt with as an offender. Anything in the nature of voluntary bankruptcy was unknown to that system. Per-

sons who were permitted to fall within the term 'bankrupt' were limited to traders. \* \* \* "

The Court then proceeds to point out that the framers of the Constitution did not intend to limit the Congress to the then existing English law and practice upon the subject, and we quote from that decision for its historical value and to show that bankruptcy as then understood was involuntary in nature and the scope of persons who might come within its terms was limited.

In South Carolina v. United States, 199 U. S. 437, 450, the Court said:

"In this, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. Minor v. Happersett, 21 Wall. 162, 22 Li. ed. 627; Exparte Wilson, 114 U. S. 417, 422, L. ed. 89, 91, 5 Sup. Ct. Rep. 935; Boyd v. United States, 116 U. S. 616, 624, 635, 29 L. ed. 746, 748; 6 Sup. Ct. Rep. 524; Smith v. Alabama, 124 U. S. 465, 31 L. ed. 508; 8 Sup. Ct. Rep. 564. The language of the Constitution, as has been well said, could not be understood without reference to the common law. 1 Kent, Com. 336; Bradley, J., in Moore v. United States, 91 U. S. 270, 274, 23 L. ed. 346, 347.

"To determine the extent of the grants of power we must, therefore, place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants."

In Marshall v. Gordon, 243 U. S. 521, 533, this Court, by Mr. Chief Justice White, said:

"Undoubtedly what went before the adoption of the Constitution may be resorted to for the purpose of throwing light on its provisions. \* \* \* "

As we have seen, the common law recognized the prerogative of the sovereign and that the sovereign was not bound by general language of a statute which worked to his disadvantage. This was well understood at the time the Constitution was adopted and was a principle that had been in use from time immemorial.

For a historical discussion of the various bankruptcy statutes, see *Hanover Nat. Bk. v Moyses*, 186 U. S. 181, 184, also the late case of *Continental Illinois* Nat. Bk. & Trust Co. v. Chicago-Rock Island & Pacific Ry. Co., supra.

Suffice it to say in this regard that we have no record that prior to the adoption of the Constitution any bankruptcy statute in any country had ever applied to the sovereign, and since the adoption of the Constitution, until Congress enacted Chapter IX. no attempt, so far as we are aware, has ever been made by Congress to apply a bankruptcy statute to a state or any of its agencies or instrumentalities.

## (6) APPLICATION OF THE BANKRUPTCY POWER TO STATE AGENCIES MIGHT DESTROY THEM.

It would hardly seem that the framers of the Constitution intended to place in the hands of these districts or other public agencies a weapon that might be used by them or their leaders to destroy the agencies themselves. If the power exists in Congress to fasten upon these public agencies a bankruptcy measure of any kind then the weapon of destruction would

seem to be in their hands or in the hands of Congress, and whether it be used or not, by them or by Congress, the elements of destruction are ever present. These public agencies that construct and operate extensive works must, from time to time, have credit and borrow money. If the means is placed in their hands or is available to them or might become available to or against them, by act of Congress, by which the creditor is or may be left without protection or means to enforce his contract then the credit of the district would seem to be nearly if not quite gone.

The Court is, of course, concerned only with the question as to whether or not the act squares with the Constitution (United States v. Butler, 297 U. S. 1, 62, 63), but in resolving that question, the Court will, on occasion, consider what effect the act will or is likely to have (W. B. Worthen Co. v. Kavanaugh, 295 U. S. 56, 60; Shouse v. Quinley, 3 Cal. (2d) 357, 361; James v. Dravo Contracting Co., 82 L. ed. Adv. Op. 125, 136).

It may be argued that bankruptcy has not destroyed the credit of private agencies. The answer to that argument is clear. Private agencies may pledge or mortgage or otherwise hypothecate their assets, and they have assets which may be pledged, mortgaged or hypothecated. Not so with the public agency. The assets of the public agencies which could be pledged or mortgaged, are not usually permitted to be so pledged or mortgaged. The main asset of the public agency is the taxing power. The taxing power can never be mortgaged. The California irrigation dis-

trict, in particular, is not permitted to pledge, mortgage, or hypothecate property which it may have.

Section 17 of the original Wright Act of California, after providing that the bonds and interest should be paid by revenue derived from an annual assessment and that the real property in the district should be and remain liable to be assessed for such payment (largely the same as Sec. 33 of the present Act). was amended in 1893 to provide that as an additional security for the payment of bonds and interest thereon, the Board of Directors should have power to pledge by mortgage, trust deed, or otherwise, all property of the district. After this amendment, Escondido Irrigation District, organized under the Wright Act, made two issues of bonds aggregating \$350,000 and purported to execute a trust deed upon its water system and other property. Upon default, the trustees brought action to foreclose the lien and to sell the property. In the case of Merchants National Bank of San Diego v. Escondido Irrigation District, 144 Cal. 329, 333, the Court held the trust deed to be void and the amendment to Section 17 of the Wright Act to be unconstitutional and said:

"The pledge or hypothecation of the property of the district, in the absence of qualifying expressions, necessarily implies the right of foreclosure and sale in the ordinary way,—that is to say, in such manner as to convey to the purchaser the whole property in the land hypothecated, legal and equitable. (Civ. Code, secs. 2931, 3000.) And this construction is confirmed by the consideration that the conveyance of the mere legal title

would not serve as additional security, as intended by the act; and that to convey, in addition to the legal title, the statutory powers of the board to the possession and management of the water system and other property of the district would be in contravention of section 13 of article XI of the constitution, which forbids the delegation of such powers. Which provision, it can hardly be doubted, must (with section 12 of the same article) be construed as applying equally to public or municipal corporations of this character, as to ordinary municipalities or cities. For not only is this construction required by the reason, and consequently by the presumed intention, of the constitutional provision, but the term municipal, as commonly used, is appropriately applied to all corporations exercising governmental functions, either general or special; and, indeed, this must be taken as the definition of a public or municipal corporation."

As a further ground for holding the Act unconstitutional and the trust deed void, the Court said:

"The other position of the appellant is equally untenable. The state, indeed, has a large, though not an unlimited, power of disposition over the property of ordinary municipalities; which is commonly held in trust for the public generally, or for the limited public of the municipality. (Cooley on Constitutional Limitations, 342 et seq.; 1 Dillon on Municipal Corporations, secs. 27, 66, 67.) But here, the corporation in question is distinguished from ordinary municipal corporations by the fact that 'the legal title', only of the property of the corporation is vested in the district, 'in trust for the uses and purposes set forth

in (the) act'; and that the beneficiaries of the trust—who, upon familiar equitable principles, are to be regarded as the owners of the property—are the landowners in the district with whose funds the property has been acquired (Civ. Code, sec. 853); and in whom, indeed, is vested by the express provisions of the statute, in each, the right to the several use of a definite proportion of the water of the district, and in all, in common, the equitable ownership of its water-rights, reservoirs, ditches, and property generally, as the means of supplying water."

While the Courts in later cases have held that the equitable title or beneficial interest in the land is vested in the State and not in the property owners, the principle enunciated in the *Escondido* case to the effect that the public property of the District can not be mortgaged has remained unchanged and seems definitely to be the law.

(While the beneficial ownership of the property held by one of these districts has a strong bearing upon the nature of the district, we feel that the point is so well settled that we are hardly justified in setting out those authorities at this point, but for the convenience of the Court, a list of such authorities showing the state to be the beneficial owner is attached to this brief as appendix A.)

Even the unsecured creditor of the private agency is protected to the full extent of the assets of the agency. The unsecured creditor of the private agency may sue and reduce his claim to judgment and execute upon the property of the private agency and, so long

as there is property available, the judgment will be paid. Execution will not lie upon the property of the California irrigation district. If the private agency becomes insolvent then, through a Court of bankruptcy, voluntary or involuntary, its assets are marshalled and the creditors are paid in proportion to such assets. Since the principal asset of the public agency is the taxing power and the other assets are held in trust, there are no assets to be marshalled. Sec. 29 of the California Irrigation District Act reads, in part, as follows:

"The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act."

Deering's General Laws, 1931, p. 1970, Act. 3854.

It may be assumed that if Congress has the power to enact a bankruptcy statute that will apply to one of these public governmental agencies, Congress will act reasonably and even wisely, but that is not the answer. If Congress has the power, then Congress may exercise the power and so long as it is thought that Congress has that power, the threat is ever present. Whether the power is exercised or not is of little consequence because if the power exists every contract that is made by one of these public agencies is subject to the exercise of that power. In other words, it is subject to an unknown condition. If Congress has the power to enact a voluntary measure, such as this,

it may enact an involuntary one or one of far reaching consequences.

It must be kept in mind that in the Act now before the Court the taxing agency is made independent of the State so far as this bankruptcy statute is concerned. The State agency requires no consent from the State. While we do not regard lack of consent to be at all controlling, the agency may injure its credit by petition under this act, even though State policy might be entirely opposed to such proceeding. It is not difficult to imagine a case where the State credit would be seriously affected by virtue of a considerable number of its agencies coming under this act, and the State credit would seem to be affected by the act, or if the power exists in Congress to pass the act, whether there is any act or any of its agencies take advantage of the act. It can hardly be doubted, furthermore, that if the power exists in Congress to permit one of these agencies to impair the obligations of its contracts through a Court of Bankruptcy it has the same power and could with equal propriety permit the State to do the same thing.

The fact that Congress has not seen fit in this or in its previous attempt, to exercise its full power is not in derogation of the power. The Congress may exercise its full power when it deems such action expedient. No bankruptcy measure prior to the adoption of Chapter IX. seems to have ever been adopted to apply to the sovereign. Since such a measure was wholly unknown at the time of the adoption of the Constitution and since the exercise of such a power by the Congress would seem to be incompatible with

the State, and could easily be made to seriously injure the State and its agencies, and since the bankruptcy clause is couched in the most general language, it is doubtful if such extraordinary power in the Congress was ever intended.

The People is the true sovereign. Under our form of government the sovereign has set up two agencies to perform its functions of government. The one is the State, the other is the United States, and the sovereign has assigned to each of its agencies of government those functions which is deemed expedient for that particular agent to perform, and as we have seen, each of these agents, within its field of action delegated or reserved by the People, is independent of the other.

We have seen that under the taxing clause of the Constitution the People did not intend that either of its agents should have the power to destroy or hamper the other of its agents and thus the United States, though not expressly prohibited from doing so, is not permitted by the Constitution to tax the State and its governmental agents, and on the other hand, and by the same rule, the State is not permitted to tax the United States and its governmental agents. Now unless we suppose that the People intended to give to the United States, under the bankruptcy clause, the power to control, hamper and ultimately destroy the State. it would seem that the same rule must apply as has been applied to the taxing clause, namely, that the power to extend a bankruptcy measure to the State has never been given and is thus prohibited.

- (7) AN IERIGATION DISTRICT IN CALIFORNIA IS A PUBLIC COR-PORATION PERFORMING A GOVERNMENTAL FUNCTION AND IS THUS A GOVERNMENTAL AGENT OF THE STATE.
  - "'In our opinion, it is too late in the day'," said this Court in O'Neill v. Leamer, 239 U. S. 244, 251, speaking through Mr. Justice Hughes, quoting from the opinion of the Supreme Court of Nebraska, "'to contend that the irrigation of arid lands, the straightening and improvement of water courses, the building of levees and the drainage of swamp and overflowed land for the improvement of the health and comfort of the community, and the reclamation of waste places and the promotion of agriculture, are not all and every one of them subjects of general and public concern, the promotion and regulation of which are among the most important of governmental powers, duties, and functions. \* \* \* ' We see no reason at this time to depart from that opinion, and therefore this contention must be considered foreclosed as far as this Court is concerned. \* \* \* "

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In Houck v. Little River Drainage District, 239 U.S. 254, this Court, also speaking through Mr. Justice Hughes, relating to a drainage district in Missouri, said:

"It was constituted a political subdivision of the state for the purpose of performing prescribed functions of government " " These drainage districts, as the Supreme Court of the state has said, exercised the granted powers within their territorial jurisdiction 'as fully, and by the same authority, as the municipal corporations of the state exercised the powers vested by their charter. " " "" In Fallbrook Irrigation District v. Bradley, 164 U. S. 112, this Court said:

"The formation of one of these irrigation districts amounts to the creation of a public corporation and their officers are public officers."

In Ashton v. Cameron County Water Improvement District No. 1, 298 U. S. 513, 527, this Court, speaking through Mr. Justice McReynolds, said:

"It is plain enough that respondent is a political subdivision of the state, created for the local exercise of her sovereign powers, and that the right to borrow money is essential to its operation. \* \* Its fiscal affairs are those of the state, not subject to control or interference by the national government, unless the right so to do is definitely accorded by the federal constitution."

In the dissenting opinion in the Ashton case, Mr. Justice Cardozo said:

"Cameron County Water Improvement District No. One is a public corporation, created by the laws of Texas. \* \* \* "

In the late case of Brush v. Commissioner, 300 U.S. 352, 368, this Court, by Mr. Justice Sutherland, said:

"We recently have held that the bankruptcy statutes could not be extended to municipalities or other political subdivisions of a state. Ashton v. Cameron County Water Improv. Dist., 298 U. S. 513, 80 L. ed. 1309, 56 S. Ct. 892, 31 Am. Bankr. Rep. (N. S.) 96. The respondent there was a water-improvement district organized by law to furnish water for irrigation and domestic uses. We said (pp. 527, 528) that respondent was

a political subdivision of the state 'created for the local exercise of her sovereign powers. \* Its fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution.' In support of that holding, former decisions of this court with respect to the immunity of states and municipalities from federal taxation were relied upon as apposite. The question whether the district exercised governmental or merely corporate functions was distinctly in issue. The petition in bankruptcy alleged that the district was created with power to perform 'the proprietary and/or corporate function of furnishing water for irrigation and domestic uses. \* \* \* ' The district judge held that the district was created for the local exercise of state sovereign powers; that it was exercising 'a governmental function'; that its property was public property; that it was not carrying on private business, but public business. That court, having denied the petition for want of jurisdiction, the district submitted a motion for a new trial in which it assigned, among other things, that the court erred in holding that petitioner was created for the purpose of performing governmental functions, 'for the reason that the Courts of Texas, as well as the other Courts of the Nation, have uniformly held that the furnishing of water for irrigation was purely a proprietary function. \* \* \* ' Substantially the same thing was repeated in other assignments of error. In the petition for rehearing in this court, the district challenged our determination that respondent was a political subdivision of the state

'created for the local exercise of her sovereign powers', and asserted to the contrary that the facts would demonstrate that 'respondent is a corporation organized for essentially proprietary purposes'. It is not open to dispute that the statements quoted from our opinion in the Ashton Case were made after due consideration, and the case itself decided and the rehearing denied in the light of the issue thus definitely presented."

The proposition that an irrigation district is a public corporation exercising governmental functions as an agent of the State seems so thoroughly settled that further discussion is hardly necessary. For the convenience of the Court, however, we have attached to this brief as Appendix B additional authorities on this point.

The act here under consideration seems to apply only to "taxing agencies or instrumentalities". The very term implies a governmental function of the highest order.

As said by this Court in Merriwether v. Garrett, 102 U. S. 472, 515:

"The levying of taxes is not a judicial act. It has no elements of one. It is a high act of sover-eignty, to be performed only by the Legislature upon conditions of policy, necessity, and the public welfare."

The Supreme Court of California in the case of In re Madera Irrigation District, 92 Cal. 296, 322, speaking of an irrigation district of California, and particularly as to the taxing power, said:

"For the purpose of meeting the cost of acquiring this property, the district is authorized, upon the vote of a majority of its electors, to issue its bonds, and these bonds and the interest thereon are to be paid by revenues derived under the power of taxation, and for which all the real property in the district is to be assessed. Under this power of taxation, one of the highest attributes of sovereignty,—the title of the delinquent owner to the real estate assessed may be divested by sale, and power is conferred upon the board of directors to establish equitable by-laws, rules, and regulations for the distribution and use of water among the owners of said lands, and generally to perform all such acts as shall be necessary to fully carry out the purpose of the act. Here are found the essential elements of a public corporation, none of which pertain to a private corporation. The property held by the corporation is in trust for the public, and subject to the control of the state. Its officers are public officers, chosen by the electors of the district, and invested with public duties. Its object is for the good of the public, and to promote the prosperity and welfare of the public."

See also:

Lane County v. Oregon, 7 Wall. 71, 76.

### CONCLUSIONS.

Since it seems clear enough that if Congress under the Constitution has the power to extend a voluntary act on the subject of bankruptcy to a governmental agency of the State it could with equal propriety and acting under the same power extend an involuntary bankruptcy measure to a governmental agency of the State. It also seems clear that if Congress can extend a bankruptcy measure, voluntary or involuntary, to the agency of the State, exercising governmental powers, it could by the same token extend the same act. voluntary or involuntary, to the State itself. Since such a measure applied to the State might seriously embarrass the State in the exercise of its highest duties as a sovereign, it could hardly be supposed that the general language of the bankruptcy clause was intended to grant such power.

If Congress has the power—if the act is constitutional, the Court will not hesitate to enforce it, but in times of great economic stress, in an effort to obtain temporary relief from pressing burdens or obligations, we are sometimes prone to overreach with little regard for ultimate consequences or later embarrassment to ourselves and future generations. One of the great purposes of the Constitution is to guard against just that. It is a chart to guide us in fair weather but more particularly during the storm when the way does not seem so clear. If we depart from it in the storm, the way may be lost. As said by Mr. Chief Justice Taft, speaking for the Court in Bailey v. Drexel Furniture Company, 259 U. S. 20, 37:

"The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards."

Dated, San Francisco, California, March 28, 1938.

Respectfully submitted,
Francis V. Keesling,
Counsel for West Coast Life Insurance
Company As Amicus Curiae.

CHARLES L. CHILDERS, Of Counsel.

(Appendices A and B Follow.)

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# Appendix A

As holding that the beneficial interest in the property of these public agencies is in the State.

In Reclamation Dist. v. Birks, 159 Cal. 233, 238, the Court stated:

"In the recent case of Pass School District v. Hollywood, 156 Cal. 416, (26 L. R. A. (N. S.) 485, 105 Pac. 122), this court was called upon to determine the ownership of the property of a school district, which by the legal annexation of certain land had passed into another school district. It was contended that the property having been paid for by the inhabitants of the school district in which it was originally situated, title to it still remained in the original district, with the right in that district of leasing or selling it. But by this court it was pointed out that school districts are like reclamation districts, quasi municipal corporations, and that, subject to such constitutional limitations as may exist, the power of the legislature over them is plenary; that the legislature may divide, change or abolish them at pleasure; that the beneficial title to all the property owned by the district is in the state and that when, by the change of boundaries this property falls within a new district, the beneficial title still remains in the state and, in legal contemplation, the state has merely placed the legal title in the hands of other trustees to manage it. It is said: 'The legislative power being full and complete over the matter, as a part of that power it may make provision for the division of the property and the apportionment of the debts of the old corporations when a portion of its territory and public property are transferred to the jurisdiction of another corporation, but in the absence of such provision the rule of the common law obtains, and that rule leaves the property where it is found and the debt upon the original debtor.' The principle and the rule are the same in the case at bar \* \* \*.''

In Reclamation Dist. v. Superior Court, 171 Cal. 672, 680, the Court said:

"All of these rulings are founded upon the proposition that the county (or reclamation or school district) is a mere political agency of the state, that it holds its property on behalf of the state for government purposes, and that it has no private proprietary interest in such property as against the state " " "

"These views are in no wise inconsistent with the recognition of a sufficient title in the counties to justify their maintaining actions against private persons or corporations injuring roads or other public property. That such actions may be maintained is the full extent of the holding in cases like Sierra County v. Butler, 136 Cal. 547 (69 Pac. 418), and Yuba County v. Kate Hayes Min. Co., 141 Cal. 360 (74 Pac. 1049), cited by respondents \* \* \*."

In Turlock Irr. Dist. v. White, 186 Cal. 183, 189, the Court said:

"It should be stated that it is conceded that irrigation districts were not taxable before the amendment of 1914, and are not now, unless such taxation is authorized by the amendment, but it is contended that they then were exempt because of the special exemption of the property of 'municipal corporations' contained in such section, and

that such irrigation districts are now-taxable under the special exception in the amendment authorizing the taxation of 'municipal corporations'. To the contrary, such exemption existed because of the express exemption of the property of 'the state', contained in that section and because of the implications in favor of exemption of public property \* \* \*

"The language quoted in the dissenting opinion from Southern Pacific Co. v. Levee Dist. No. 1, 172 Cal. 345 (156 Pac. 502), read in the light of the express statement in the opinion that such districts are not 'municipal corporations', would indicate that the court considered that the property of the district was 'state property' rather than property of a 'municipal corporation'.

In Reclamation Dist. No. 551 v. County of Sacramento, 184 Cal. 477, 479, the Court was considering the question of the taxability of property held by reclamation districts, and said:

"It would be sufficient to hold that it is public property of the state, within the meaning of the constitution. The whole scheme of reclamation originates with the state, and is carried to a conclusion by agents of the state—the districts, as we have already seen, being a public agency,—in furtherance of public policy. The property mentioned in section 3471 of the Political Code is public property, acquired by the agents of the state, for state purposes, and we think is exempt from taxation, as such."

In People v. Richards, 86 Cal. App. 86, 93, the Court was considering a case involving the Los Angeles County Flood Control District, and after holding that

that district is similar to irrigation and reclamation districts (p. 91), and citing the case of *Turlock Irr.* Dist. v. White, supra, said:

"The plain conclusion from these authorities is that the quasi corporations under consideration, including irrigation districts, reclamation districts, and school districts, are all merely state agencies for carrying out state purposes and their property is state property."

In Pass School District v. Hollywood City School Dist., 156 Cal. 416, 418, the Court was considering the property of a school district, and said:

"Subject to such constitutional limitations as may exist, the power of the legislature over these public municipal corporations is plenary. It may divide, change, or abolish them at pleasure."

A quotation similar to this has been applied to irrigation districts in many cases. Then the Court continues (p. 419):

"" \* " it should be sufficient to point out that in all such cases the beneficial owner of the fee is in the state itself, and that its agencies and mandatories—the various public and municipal corporations in whom the title rests—are essentially nothing but trustees of the state, holding the property and devoting it to the uses which the state itself directs."

In City of Sacramento v. Adams, 171 Cal. 458, 462, the Court said:

"" \* " It is to be borne in mind that the state itself has absolute control of all the property of such of its agencies as cities, towns, counties—is, in a sense, the ultimate owner thereof."

In Drainage Dist. v. Reclamation Dist. No. 730, 1 Cal. (2d) 350, 352, the Court said:

# Appendix B

The following authorities indicate the governmental nature of irrigation districts and similar public agencies in California;

### (1) Governmental.

In Dean v. Davis, 51 Cal. 406, 410, 411, the Court said:

"It is true, perhaps, that it was not formed or organized 'for the government of a portion of the state', in the broadest sense of the term. But it nevertheless exercises certain governmental functions within the district. \* \* \* To constitute a public corporation it is not essential that it shall exercise all the functions of government within the prescribed district. School districts and road districts may be, and often are, public corporations, 'invested with a corporate character, the better to perform within, and for the locality, its special function, which is indicated by its name. It is but an instrumentality of the State, and the State incorporates it that it may more effectually discharge its appointed duty.'"

In Miller & Lux v. Board of Supervisors, 189 Cal. 254, 263, the Court said:

"\* \* In the opinion in the Madera District case the irrigation district was treated as a public corporation to be invested with certain political duties to be exercised in behalf of the state."

In People v. Cardiff Irr. Dist., 51 Cal. App. 307, 312 (hearing by Supreme Court denied), after holding

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\* \* nevertheless the affairs, concerning which ich district does act are those of a public cororation to be invested with certain political duties hich, it is to exercise in behalf of the state."

Bolton v. Terra Bella Irr. Dist., 106 Cal. App. 16 (hearing by Supreme Court denied), the Court

The county is an agency of the state for perorming certain functions of government. The egislature has likewise provided for, and authorted, irrigation districts to carry out another funcon of government. \* \* \*"

Woody v. Security Trust & Savings Bank, 137 App. 29, 35 (hearing by Supreme Court denied), ourt said:

\* \* \* An irrigation district possesses governnental functions and is a creature of law which an only be brought into being under the direct uthority of the state."

Yolo v. Modesto Irr. Dist., 216 Cal. 274, 277, the said:

\* \* \* it was within the classification of a public r state agency performing a governmental funcon, \* \* \*"

People v. San Joaquin Valley Agricultural Assn., al. 797, 799, 805, the Court was considering a of organizations not greatly different in their al structure from an irrigation district, and said:

"" \* A consideration of the provisions of that act \* \* \* clearly shows that the association is a public corporation engaged in carrying on one of the objects committed to the state government by the constitution \* \* \*

"All these considerations conclusively demonstrate that these associations are public agencies of the state, within its exclusive management and control, and charged with the performance of a part of the functions of the state government \* \* \* \*"

In support of this proposition the Court cites a great number of authorities, most of which relate to irrigation and reclamation districts.

In Swampland etc. Dist. No. 341 v. Blumenberg, 156 Cal. 532, 537, the Court said:

"" \* A levy for such purposes by a district which has completed its permanent system of ditches, a district which, though not a municipal corporation, is at least a public corporation performing some of the functions of government for the local territory interested, bears a close resemblance to ordinary taxes levied to defray the expenses of a city or county \* \* \*"

In Miller & Lux v. Board of Supervisors, 189 Cal. 254, 263, the Court said:

"\* \* In the opinion in the Madera District case the irrigation district was treated as a public corporation to be invested with certain political duties to be exercised in behalf of the state \* \* \*" (2) As holding districts of this nature to be public corporations.

From 1874 to 1931, Section 284 of the Civil Code of California, provided in part as follows:

"Public corporations are formed or organized for the government of a portion of the State."

This language was noted in the case of  $Dean\ v$ . Davis, supra, decided in 1876. In that case the Court said (p. 410):

"It is equally clear that, tested by the definitions already given, it is a *public* and not a private corporation."

The Court in the *Dean* case was considering a reclamation district which has been held many times to be similar in character to an irrigation district.

In People v. Williams, 56 Cal. 647, it is stated:

"It must be considered as settled in this state \* \* \*

that a reclamation district is a public corporation."

In Central Irr. Dist. v. De Lappe, 79 Cal. 351, 353, the Court said:

"It is settled that reclamation districts are public corporations."

In Crall v. Poso Irr. Dist., 87 Cal. 140, 145, the Court stated:

"There can no longer be any question that the Wright Act is constitutional, and that irrigation districts organized under its provisions, like reclamation districts, are public corporations.",

In In re Madera Irr. Dist., 92 Cal. 296, 321, the Court said:

"That an irrigation district organized under the act in question becomes a public corporation is evident from an examination of the mode of its organization, the purpose for which it is organized, and the powers conferred upon it \* \* \*

"" \* " (p. 322) Here are found the essential elements of a public corporation, none of which pertain to a private corporation \* " (p. 323) 'Where a corporation is composed exclusively of officers of the government, having no personal interest in it, or with its concerns, and only acting as organs of the state in effecting a great public improvement, it is a public corporation.' (Angell & Ames on Corporations, sec. 32.) " " " 'Public corporations are such as are created for the discharge of public duties in the administration of civil government.' (Lawson's Rights and Remedies, sec. 332.)"

In People v. Turnbull, 93 Cal. 630, 632, it is said:

"An irrigation district organized under the Wright Act is a public corporation."

In People v. Selma Irr. Dist., 98 Cal. 206, 208, the Court said:

"The defendant is a public corporation, organized under a general law of the state enacted by the legislature for the purpose of promoting the general welfare \* \* \*"

In Reclamation Dist. No. 124 v. Gray, 95 Cal. 601, 605, the Court stated:

"The district certainly was a public corporation from the date of the legislative act \* \* \*"

In the case of Quint v. Hoffman, 103 Cal. 506, 507, the Court said:

"\* \* An irrigation district of this character is a public corporation, formed under a general law, and its object is the promotion of the general welfare."

In Metcalfe v. Merritt, 14 Cal. App. 244, 246, the Court said:

"Reclamation districts belong to that class of civil organizations denominated 'public corporations'."

In Whiteman v. Anderson-Cottonwood Irr. Dist., 60 Cal. App. 234, 237, it is said:

"As to the character of irrigation districts as organized under the statute, it must be conceded that they are public corporations or public agencies \* \* \* \*"

In Bottoms v. Madera Irr. Dist., 74 Cal. App. 681, 694 (hearing by Supreme Court denied), the Court said:

"In considering these questions we think the following propositions are so firmly established that citation of authority is unnecessary, to wit: That irrigation districts are public corporations or agencies \* \* \* ""

In Jackson & Perkins Co. v. Byron-Bethany Irr. Dist., 136 Cal. App. 375, 381 (hearing by Supreme Court denied), it is stated:

"It is conceded by both sides that the defendant district is a public corporation and as such an agency of the state." In Jennison v. Redfield, 149 Cal. 500, 501, the Court said:

"Walnut Irrigation District is a public corporation organized under what is known as the Wright Act (Stats. 1887, p. 29) and the acts supplementary thereto."

In Morrison v. Smith Brothers, 211 Cal. 36, 40, the Court was considering a municipal utility district and said:

"The other type of public corporation upon whose tort liability this court has already passed is typified by irrigation, reclamation or drainage organizations, whose main purpose is to assist the state in reclaiming, improving and aiding the productivity of farm land."

In Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist., 3 Cal. (2d) 489, 504, the Court said:

"\* \* It is a public corporation, organized in 1915, under the Irrigation District Act of 1897, and amendments thereto. (Stats. of 1897, p. 254.)

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No. 772

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#### IN THE

# DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

BANKBUPTCY.

# No. 4575

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY, FOR CONFIRMATION OF A PLAN FOR THE COMPOSITION AND READJUSTMENT OF ITS DEBTS.

# STATEMENT AS TO JURISDICTION OF THE SUPREME COURT.

(Rule 12.)

The appellant, Lindsay-Strathmore Irrigation District, upon the presentation of its petition for allowance of an appeal to the Supreme Court of the United States from the District Court of the United States for the Southern District of California, Northern Division, presents the following statement disclosing the basis upon which appellant contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree from which the appeal is taken.

# Nature of the Case and Ruling of the Court.

The appellant, Lindsay-Strathmore Irrigation District, an irrigation district organized and existing under the laws of the State of California, filed in the District Court of the United States for the Southern District of California, Northern Division, a petition for confirmation of a plan for the composition and readjustment of its debts, pursuant to the provisions of Chapter X of the Bankruptcy Act. An order approving the petition as properly filed under the provisions of the Act was made and entered. Thereafter, creditors of petitioner filed in the proceeding a motion to dismiss upon the ground, among others, set forth in said motion as follows:

- "That this court is without jurisdiction to entertain the petitioner's petition and the plan of readjustment filed therewith or to hear or determine this cause because this proceeding and the bankruptcy act under which this proceeding is brought, being Public No. 302, approved August 16th, 1937, is unconstitutional and void and affects the property rights of these respondents for the following reasons, to-wit:
- "1. Under Section 8, Article I of the Constitution of the United States, Congress has power to pass uniform laws on the subject of bankruptcy throughout the United States, and said Act is not a uniform law on the subject of bankruptcy throughout the United States.
- "2. That under said act private property may be taken for public use without just compensation, contrary to the provisions of Amendment V of the Constitution of the United States, and the petitioner's petition and the plan of readjustment filed therewith propose to take respondents' property without just compensation.
- "3. That under the Constitution of the United States and the plan of government set forth therein, the Fed-

eral Government is a government of delegated powers, and no power has been delegated to Congress to pass legislation such as said Act of Congress, being Sections 81 to 84 inclusive, of the Bankruptcy Act of 1898, regulating the rights of citizens, and particularly these respondents, against the states or state governmental agencies in the manner therein provided.

- "4. That said act was passed in violation of the reserved rights of states of the United States as guaranteed to the states by Article X of the Federal Constitution, and because the passage of said act is a violation of the rights of citizens, and particularly these respondents, guaranteed and reserved to them by Amendment X to the Constitution.
- "5. Said act attempts to subject state governmental agencies to the jurisdiction of federal courts contrary to the plan and scheme of government, as set out in the Constitution of the United States.
- "6. Said act in other respects violates the Constitution of the United States."

It appearing from such motion to dismiss that the constitutionality of an act of Congress affecting the public interest was drawn in question, the court having jurisdiction of this proceeding certified such fact to the Attorney General and entered an order permitting the United States to intervene and become a party for presentation of evidence and argument upon the question of the constitutionality of such Act. Thereafter the United States through its proper law officer, filed its appearance in the proceeding and appeared upon the hearing of the motion to dismiss and presented an argument in favor of the constitutionality of the statute.

The motion to dismiss was granted and judgment of dismissal, being the judgment appealed from, was entered solely upon the ground that the Act of Congress under which the proceedings were brought by petitioner was unconstitutional.

# Statutory Provision Sustaining Jurisdiction.

"That whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court cost to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such act."

(Aug. 24, 1937, C. 754, Sec. 1, 50 Stats. Sec. 401, Title 28, U. S. C. A.)

"In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order and in the event that any such appeal is taken, any appeal or cross-appeal by any party to the suit or proceeding taken previously. or taken within sixty days after notice of any special under this section, shall also be or be treated as taken

directly to the Supreme Court of the United States. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law."

(Aug. 24, 1937, C. 754, Sec. 2, 50 Stats. Sec. 349-a,

Title 28 U.S. C. A.)

# Statute of the United States the Validity of Which is Involved.

The statute of the United States the validity of which is involved is Chapter X of the Uniform Bankruptcy Act (Aug. 16, 1937, C. 657, 50 Stats. page 659, U. S. C. A. Title XI, Sec. 401-404), which statute reads as follows:

## "AN ACT

To Amend an Act Entitled 'An Act to Establish a Uniform System of Bankruptcy Throughout the United States', Approved July 1, 1898, and Acts Amendatory There of and Supplementary Thereto.

"BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', as approved July 1, 1898, and Acts amendatory thereof and supplementary thereto be, and they are hereby, amended by adding thereto a new chapter, to be designated 'chapter X', to be and read as follows:

#### 'CHAPTER X.

#### 'Additional Jurisdiction.

'SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levies against and constituting liens upon property in any of said taxing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination thereof; (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school or public-school authorities organized or created for the purpose of constructing, maintaining and operating public schools or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality; Provided.

however, that if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

## 'Definition.

'SEC. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

'That the term "petitioner" shall include any taxing agency or instrumentality referred to in section 81 of this chapter.

'The term 'security' shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

'The term "creditor" means the holder of a security or securities.

'Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

'The term "security affected by the plan" means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

'The singular number includes the plural and the masculine gender the feminine.

## 'Compositions.

'Sec. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of \$100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of the Uniform Bankruptcy Act of 1898, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have accepted it in There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith. or dismissing it, if not so satisfied.

'The "plan of composition", within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

'No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

'For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent Where any committee, organization, or committee. group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceedings is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class. and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

'(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one news-

paper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for

the hearing. 'At any time not less than fen days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained, shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interests: Provided, however, That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

'At the hearing or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceeding as may be just; Provided, however, That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States Circuit Court of Appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

'On thirty days' notice by any creditor to petition, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

'(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the

matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the , petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

'(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner; Provided, however, That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the

payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

'(e) At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1) it is fair, equitable, and for the best interest of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter: (3) has been accepted and approved as required by the provisions of subdivision (d) of this section: (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dis-

missing the proceeding.

Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: Provided, however. That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be

suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

- '(f) If an interlocutory decree confirming the plan is entered as herein provided, the plan and said decree of condrmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it.
- '(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.
- '(h) This chapter shall not be construed as to modify or repeal any prior, existing statute relating to the refinancing or readjustment of indebtedness of munici-

palities, political subdivisions, or districts: Provided, however, That the initiation of proceedings or the filing of a petition under Section 80 shall not constitute a bar to the same taxing agency or instrumentality initiating a new proceeding under section 81 thereof.

'(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

# 'Termination of Jurisdiction.

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'SEC. 84. Jurisdiction conferred on any court by section 81 shall not be exercised by such court after June 30, 1940, except in respect of any proceeding initiated by filing a petition under section 83 (a) on or prior to June 30, 1940.'

Passed the House of Representatives June 24, 1937. Attest:

South Trimble, Clerk."

# Date of the Judgment or Decree Sought to be Reviewed and of Presentation of Application for Appeal.

The judgment of dismissal was dated December 2, 1937, and entered December 2nd, 1937, and the date upon which the application for appeal is presented is December 13th, 1937.

## Questions Involved are Substantial.

The validity of the statute which is here involved, Chapter X of the Bankruptcy Act, has never been determined by the Supreme Court of the United States. Its decision in Ashton v. Cameron County Water District No. 1, 298 U. S. 513, 80 L. Ed. 1309, is not determinative of the con-

stitutionality of the act of Congress here in question for the reasons that:

1. In the Ashton case the court had before it an act of Congress, Chapter IX of the Bankruptcy Act, which by it express terms was limited in its operation to political suldivisions only; that is, instrumentalities created for som governmental purposes.

In re Imperial Irrigation District, 87 F. (2d) 355,

whereas Chapter X can operate upon and may be take advantage of by any of the taxing agencies or instrumentalities included within the six separate classes mentione (Section 81) in each of which classes some or all of the agencies may or may not, depending upon the different facts in each separate case, be political subdivisions, execute governmental powers or functions. The constitutionality of Chapter X should be examined by the Suprem Court in the light of the avowed purpose of Congress; a disclosed by the committee reports and explanations in Congress, to avoid the constitutional infirmities of Chapter IX as announced in the Ashton case.

Wright v. Vinton Branch, etc., 300 U. S. 440, 81 L. Ed. 487.

2. The intent of the Congress, that the constitutionality of the act be determined in its application to each particular case, is plainly indicated by the severability clause contained in Chapter X (Section 81). Although Chapter IX of the Bankruptcy Act contains (Section 80-1) a severability clause, the fact that the operation of Chapter IX is limited to political subdivisions precluded the Supreme Court of the United States from considering, in its determination of the Ashton case, any question of fact from which the attributes and character of the petitioner or the indebted ness there involved could be determined and distinguished

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nation h the ebtednished from instrumentalities possessed of other or different attributes or from indebtedness of other or different character. Such a question would have been moot because political subdivisions necessarily exercise governmental functions.

The intention of Congress to separate the applications of the act, Chapter X, is plain.

National Labor Relations Board v. Jones Laughlin Steel Corp. (1937), 301 U.S. 1, 81 L. Ed. (Adv.) 563; Williams v. Standard Oil Co. (1929), 278 U.S. 235, 73 L. Ed. 287.

# Opinion and Judgment.

A copy of the opinion delivered upon the rendering of the judgment sought to be reviewed and showing the grounds of the judgment is appended hereto.\* A copy of the judgment of dismissal is likewise appended.\* Said judgment allowed an exception to the petitioner and to the intervenor.

LINDSAY-STRATHMORE IRRIGATION DISTRICT,
By Jas. R. McBride,
Guy Knupp,
Mitchell, Silberberg, Roth & Knupp,
By Guy Knupp,
Attorneys for Petitioner and Appellant,
Lindsay-Strathmore Irrigation District.

<sup>\*</sup> The opinion and judgment of dismissal of the District Court of the United States for the Southern District of California will be found printed as appendices to the Statement as to Jurisdiction in the case of U. S. v. Bekins et al., No. 757, October Term, 1937.

# FILE COPY

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FEB 16 1938

SUPREME COURT OF THE UNITED

STATES OLERK

OCTOBER TERM, 1937

# No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT,
Appellant,

US.

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

APPELLANTS' REPLY TO THE MOTION TO DISMISS OR AFFIRM.

Jas. R. McBride, Guy Knupp, Counsel for Appellant.

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# SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1937

# No. 772

IN THE MATTER OF THE PETITION OF LINDSAY-STRATHMORE IRRIGATION DISTRICT, AN INSOLVENT TAXING AGENCY, FOR CONFIRMATION OF A PLAN FOR THE COMPOSITION AND READJUSTMENT OF ITS DEBTS.

# LINDSAY-STRATHMORE IRRIGATION DISTRICT AND UNITED STATES OF AMERICA,

vs.

Appellants,

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES APPOINTED BY THE WILL OF MARTIN BEKINS, DECEASED; MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES APPOINTED BY THE WILL OF KATHERINE BEKINS, DECEASED; J. R. MASON, JAMES IRVINE, A. HEBER WINDER, AS TRUSTEE FOR EVA A. PARRINGTON TRUST; C. A. MOSS AND JAMES H. JORDAN,

Appellees.

# BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM JUDGMENT.

Appellant, Lindsay-Strathmore Irrigation District, under the provisions of Chapter X of the Uniform Bankruptcy Act filed in the District Court a petition for confirmation of a plan for the composition and readjustment of its debts. A motion to dismiss the petition was made upon the ground that the act of Congress under which the petition was filed is violative of the Federal Constitution. The motion to dismiss was granted upon the stated ground. A direct appeal to this court under statutory authority (August 24, 1937, C. 754, Sec. 2, 50 Stats.) has been taken from the judgment of dismissal.

A motion to dismiss the appeal or affirm the judgment has been noted. The ground of the motion is that the question involved in the appeal presents no substantial federal question. Prior decisions of this court (Ashton v. Cameron County Water Improvement District No. 1, 298 U. S. 513, 56 Sup. Ct. 892; Waterford Irrigation District v. Covell, 300 U. S. 682, 57 Sup. Ct. 753; Merced Irrigation District v. Bekins, 58 Sup. Ct. 30) declaring unconstitutional a prior act of Congress (Chapter IX of the Bankruptcy Act) are urged as decisive of the questions here involved.

Appellant, Lindsay-Strathmore Irrigation District, contends that the motion to dismiss or affirm should be denied for the following reasons:

1. The very matter of the controversy directly draws in question and is controlled by the construction and application of the Constitution to an act of Congress, the constitutionality of which has never been passed upon by this court, and it is per se and inherently a Federal question.

Equitable Life Assurance Society v. Brown (1902), 187 U. S. 308, 47 L. Ed. 190;

Swafford v. Templeton et al. (1902), 185 U. S. 487 at 493, 46 L. Ed. 1005, at 1008;

Hart v. B. F. Keith Vaudeville Exchange (1923), 262 U. S. 271, at 273, 67 L. Ed. 977 at 979.

2. This appeal involves the construction and application of the Constitution to an act of Congress subsequently drawn with a view to insure its constitutionality and avoid the infirmities of the previous act as disclosed in the prior decisions cited and relied upon by appellees, and therefore involves and necessitates new analysis and exposition.

Wright v. Vinton Branch of the Mountain Trust Bank of Roanoke, etc., et al. (1937), 300 U.S. 440, 81 L. Ed. 736;

Louisville & N. R. R. Co. v. Melton (1910), 218 U. S. 36 at 49, 54 L. Ed. 921, at 926;

Milheim v. Moffat Tunnel Imp. Dist. (1922), 262 U.S. 710 at 716, 67 L. Ed. 1194 at 1199.

3. The prior decisions cited and relied upon by appellees relate to the construction and application of the Constitution to an act of Congress which by its terms is applicable only to political subdivisions.

In re Imperial Irrigation District (1936), 87 F. (2d) 355.

The issues presented here involve the construction and application of the Constitution to a later act of Congress which by its terms applies to various and separable taxing agencies and classes of taxing agencies, which agencies may or may not be political, and therefore necessitates and involves the construction and application of the Constitution to the peculiar characteristics of the appellant district. Such district has, by the highest court of the State in which it exists, been held not to be a political subdivision.

Wood v. Imperial Irrigation District (1932), 216 Cal. 748, at 753;

Bettencourt v. Industrial Accident Comm. (1917), 175 Cal. 559, at 561;

Tarpey v. McClure (1923), 190 Cal. 593 at 606.

The motion to dismiss or affirm should be denied. Dated January 19th, 1938.

Respectfully submitted,

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603 Roosevelt Building,
Los Angeles, California,
Of Counsel for Appellant
Lindsay-Strathmore Irrigation District.

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Act of August 24, 1937; Chapter 754, Sec. 1; 50 Stat. 75, 752; U.S.C.A. Title 28, Sec. 349a
Bankruptcy Act, Chapter IX
Bankruptcy Act, Chapter IX, Sec. 80(f) 14 Bankruptcy Act, Chapter X (August 16, 1937, Chapter 657, 50
Stats. 659, U.S.C.A. Title X7, Secs. 401-404)
Bankruptcy Act, Chapter X, Secs. 81, 82, 83, 84
Bankruptcy Act, Chapter X, Sec. 83(b)
Bankruptcy Act, Chapter X, Sec. 83(e)
Bankruptcy Act, Chapter X, Sec. 83(h)
Irrigation District Act (approved March 31, 1897), Stats. Calif.
1897, p. 254, Deering Gen. Laws, Act 3854
Irrigation District Act, Sec. 52
Judiciary Reform Act (50 Stats. 75, U.S.C.A. Title 28, Sec. 401) 7

IN THE

# SUPREME COURT

# UNITED STATES.

October Term, 1937. No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

US.

MILO W. BEKINS and REED J. BEKINS, as Trustees appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

# BRIEF OF APPELLANT.

1

# Opinion of the Court Below.

The opinion of the District Court of the United States for the Southern District of California, from the judgment of which court this appeal is taken, is found in 21 Fed. Supp., at page 129.

# Jurisdiction,

Probable jurisdiction of this court has already been noted and motion to dismiss or affirm for lack of jurisdiction has been denied.

#### III.

### Statement of the Case.

Appellant, Lindsay-Strathmore Irrigation District, is an irrigation district organized on October 25, 1915, under the Statute of California known as the "Irrigation District Act" (approved March 31, 1897), Stats. Calif. 1897, p. 254, Deering Gen. Laws; Act 3854, and acts amendatory thereof and supplemental thereto.

It comprises approximately 15,260 acres located in Tulare County, California.

It is a taxing agency organized and created for the purpose of constructing, maintaining and operating projects and works devoted to the improvement of the lands within its boundaries for agricultural purposes, by making provision for the distribution of water for irrigation and domestic purposes.

It is insolvent and unable to meet its debts as they mature. It has prepared a plan for the composition of its debts, which plan it seeks to have confirmed.

Its indebtedness consists of the outstanding bonds of its two issues of bonds and the accumulated interest thereon. The two issues are designated "first issue" and "second issue" and both issues are 6% semi-annual coupon bonds maturing serially. The first issue is dated July 1, 1916, and was originally issued for \$1,400,000.00 of principal, of which issue bonds aggregating \$1,192,000.00 of principal remain outstanding. The second issue is dated October 1, 1918 and was originally issued for \$250,000.00 of principal of which second issue bonds aggregating \$235,000.00 of principal remain outstanding. In addition to the outstanding principal of the bonds, coupons

which have matured since the default of the district, which coccurred on July 1, 1933, are unpaid, and, in addition to the coupon interest, further interest at 7%, as is provided for in section 52 of the Irrigation District Act, has accumulated on matured bonds and coupons presented but not paid. The total of such additional indebtedness, representing the matured and unpaid coupons and the further interest at 7%, calculated as of October 1, 1937, is appreximately \$439,085.15, and the total matured indebtedness of the District for principal and interest upon its said bonds as of the date of the filing of its petition was the sum of \$756,085.15. Upon the assessment levied in the year 1932, there was a delinquency of 47% and since said year, the District, pursuant to the provisions of a statute of the state, has levied only an assessment of sufficient amount to maintain and operate the works of the district.

The plan of the district for the composition of its debts is in its central and general feature, one which provides for the payment in cash of a sum equal to 59,978 cents for each dollar of the principal amount of each outstanding bond. This payment is offered to the creditor bondholders in satisfaction of all amounts of principal and interest payable under the terms of the bonds or by reason of presentation as is provided in section 52 of the Irrigation District Act.

Creditors owning approximately 87% in the principal amount of the outstanding bonds, have in writing accepted the plan and consented to the filing of the petition by which the District seeks the confirmation of its plan of composition.

On September 21, 1937, the District sought to have its plan confirmed under the provisions of Chapter X (Sec-

On September 22, 1937, the court made a further order [R. 19...] directing the creditors to show cause why an injunction should not issue staying, pending the determination of the matter, the commencement or continuation of suits on account of the securities affected by the plan, and fixing a time for hearing thereon and directing notice thereof. Such notice was duly given. [R. 26....]

Certain creditors of the District, Milo W. Bekins and Reed J. Bekins, as Trustees appointed by the Will of Martin Bekins, deceased, and by the Will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder, Trustee for Eva A. Parrington Trust, C. A. Moss and James H. Jordan, who are appellees here and who hold some of the outstanding bonds of the District, seasonably appeared and made return to the order to show cause [R. 25] and also moved to dismiss [R.21.] the petition and proceedings on the ground that the court

<sup>\*</sup>Due to the fact that the printed record has not been received by counsel and cannot be received in time to permit the filing of this brief twenty-one days before the case is called for hearing, as required by the rules of this court, it is impossible to refer to the record. Permission to insert the page references after the brief is filed is requested.

was without jurisdiction and the act under which the proceeding was brought was unconstitutional and void for the following reasons:

- 1. That the act is not a uniform law on the subject of bankruptcy throughout the United States.
- 2. That under the act private property may be taken for public use without just compensation contrary to the provisions of the Fifth Amendment.
- 3. That said act is an attempt to subject state governmental agencies to the jurisdiction of federal courts contrary to the plan and scheme of government as set out in the Constitution of the United States.

The constitutionality of an act of Congress being thus drawn in question, the judge, pursuant to the provisions of the Judiciary Reform Act (50 Stats. 75, U. S. C. A. Title 28, Sec. 401. See Appendix B) duly certified [R. 65.] that fact to the Attorney General of the United States and allowed the government to intervene and the government did so intervene. [R. 65.]

Thereafter, and on November 13, 1937, the court dismissed [R. 69...] the petition and proceeding upon the ground that Chapter X is unconstitutional in that it is subject to the same constitutional infirmities which inhered in Chapter IX of the Bankruptcy Act and as was determined by this court in its decision in the case of Ashton v. Cameron County Water Improvement District No. 1 (298 U. S. 513, 56 Sup. Ct. Rep. 892).

This appeal from that judgment of dismissal is taken under and pursuant to section 1 of the Act of August 24, 1937, C. 754; 50 Stat. 75, 752; U. S. C. A. Title 28, section 349a. (See Appendix C.)

The lower court filed an opinion [R. 7/...] from which it clearly appears that the judgment of dismissal followed the determination of the court that Chapter X is unconstitutional for the same reasons assigned in the Ashton case for holding Chapter IX unconstitutional. The other constitutional objections to Chapter X set forth in the motion to dismiss are therefore only briefly considered.

#### IV.

# Specifications of Error Intended To Be Urged.

The assigned errors intended to be urged upon this appeal are:

- 1. The lower court erred in holding that the Act of Congress (Chapter X of the Bankruptcy Act—August 16, 1937, C. 657, 50 Stats, 659, U. S. C. A. Title X7, sections 401-404) is unconstitutional as applied to the petition of the petitioner, Lindsay-Strathmore Irrigation District.
  - 2. The lower court erred in dismissing the petition of Lindsay-Strathmore Irrigation District and the proceedings brought under the above mentioned Act of Congress upon the ground that the act under which the petition was filed is unconstitutional.
  - 3. The lower court erred in vacating and setting aside the order to show cause why a restraining order should not issue and the plan of composition be made temporarily operative.

#### ARGUMENT.

V

## Summary of Argument.

- I. The Statute—Chapter X of the Bankruptcy Act is a uniform law "on the subject of bankruptcies" and within the express power vested in Congress.
- II. Chapter X is not a violation of the Fifth Amendment of the Federal Constitution.
- III. Chapter X as applied to the appellant herein and to the plan of composition proposed is not an unconstitutional exercise of the bankruptcy power and does not encroach upon, interfere with, or seek to control the sovereign powers of the state in that
  - (a) Chapter X is a "composition" act and its operation as such an act cannot result in any interference with the sovereignty of the states.
  - (b) Chapter X is separable in its provisions and its applications. The appellant district is of such a nature and its plan of such a character that no encroachment upon or interference with the sovereignty of the state can result from its application in this case.

### POINT I.

The Statute—Chapter X of the Bankruptcy Act—Is a Uniform Law "on the Subject of Bankruptcies" and Within the Express Power Vested in Congress.

The motion to dismiss [R...2.2.....] assigned as one of the grounds upon which it was based that the Act—Chapter X—was not within the powers of Congress for the reason that it was not a uniform law on the subject of bankruptcy. The lower court did not specifically pass on this objection. The decision in the Ashton case assumes Chapter IX to "be adequately related to the subject of bankruptcies" and the cases therein cited seem a conclusive answer to this contention with respect to Chapter X.

Hanover Nat. Bank v. Moyses, 186 U. S. 181, 46 L. Ed. 1113;

Continental Illinois Nat. Bank & Trust Co. v. Chicago R. I. & P. R. Co., 294 U. S. 648, 79 L. Ed. 1110;

Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 79 L. Ed. 1593;

Kunzler v. Kohans, 5 Hill 317;

In re Rieman, 7 Ben. 455, Fed. Cas. No. 11673.

### POINT II.

Chapter X Does Not Violate the Provisions of Fifth Amendment.

Congress has power to pass legislation pertinent to any of the powers conferred by the Constitution however it may operate collaterally or incidentally to impair or destroy the obligation of private contracts. Under the bankruptcy power the legislation is valid though drawn with the direct intent and purpose of relieving insolvent debtors from the payment of their obligations.

Hanover Nat. Bank v. Moyses, supra;

Continental Ill. Nat. Bank & Tr. Co. v. Chicago R. I. & P. R. Co., supra.

#### POINT III.

Chapter X As Applied to the Appellant Herein, and to the Plan of Composition Proposed, Is Not An Unconstitutional Exercise of the Bankruptcy Power and Does Not Encroach Upon, Interfere With or Seek To Control the Sovereign Powers of the State.

A. CHAPTER X IS A "COMPOSITION" ACT AND ITS OPERATION AS SUCH AN ACT CANNOT RESULT IN ANY INTERFERENCE WITH THE SOVEREIGNTY OF THE STATES.

Chapter X was enacted by the Congress with the constitutional infirmities of its previously enacted Chapter IX clearly before it. The same social or economic problems were sought to be solved by both enactments. [See "Report by Committee on the Judiciary on H. R. 5969," Appendix "D".) The very limited and restricted nature of the remedy available under the bankruptcy power and of choice in procedural machinery, naturally results in much similarity in the two enactments. These considerations, therefore, combine to emphasize the importance and significance of such differences as appear in the two enactments.

Wright v. Vinton Branch of the Mountain Bank (1937), 300 U. S. 440 at 461, 463, 81 L. Ed. 736.

One such difference is that Chapter X nowhere authorizes the confirmation of a plan of "readjustment". Nor does it speak of, allude or refer to a plan of "readjust-

ment" being effectuated under its provisions. Compared with the previously enacted Chapter IX it substitutes a plan of "composition" for the plan of "readjustment". It is only in Section 83(b) that any word implying an "adjustment" is used in reference to the operation of the enactment. There the language used is "the payment shall be . . . postponed or extended or otherwise readjusted in the same manner as if such plan had been finally confirmed." In every instance throughout the entire enactment the "plan" is consistently and always called or referred to as a plan of "composition". With reference and in allusion to the prior enactment, in Section 83(h), Chapter X refers to it as a statute relating to the "refinancing or readjustment of indebtedness of municipalities, political subdivisions. or districts." The Congress carefully avoided any allusion to any prior or existing statute relating to the "composition" of such indebtedness.

In the light of the long line of decisions dealing with compositions, and from which an exposition of their nature can be ascertained, the expression of legislative intent is one of more settled and definite meaning.

The central and basic idea of a composition is that it is voluntary and not coercive. It is an agreement. It originates in a voluntary offer by the debtor and results, in the main, from voluntary acceptance by the creditors.

Naussau Smelting & Refining Works, Ltd., v. Brightwood Bronze Foundry Company (1924), 265 U. S. 269 at 271, 68 L. Ed. 1013.

In some respects it supersedes and is outside of bankruptcy and the respective rights of the debtor and creditors are fixed by their bargain.

In re Lane (1903), 125 Fed. 772 at 773;

In re Landquist et al. (1934), 70 Fed. (2d) 929 at 933;

Myers v. International Trust Company (1927), 273 U. S. 380 at 383, 71 L. Ed. 692;

Cumberland Glass Mfg. Co. v. De Witt (1915), 237 U. S. 447 at 453, 454, 59 L. Ed. 1042.

It is not analogous to an "adjustment".

Louisville Joint Stock Land Bank v. Radford (1935), 295 U. S. 555 at 586, 79 L. Ed. 1593.

No compulsion is brought to bear upon the debtor in a composition case. The composition must originate in the voluntary offer of the debtor. Coercion is felt only by the dissenting minority of creditors when the plan is confirmed.

In confirming a composition the bankruptcy court does not interfere with any fiscal or financial matter or policy of the state or of the debtor agency. Those matters and policies are all previously determined outside of the bankruptcy court.

This is emphasized by another difference in the two enactments. Chapter IX, Section 80(f), provides that the plan and "order of confirmation shall be binding upon (1) the taxing district, and (2) all creditors, etc." Chapter X in its corresponding provisions, Section 83(f) omits the provision making the order or decree binding upon the taxing district. The district is bound by its composition

agreement. No other binding force is necessary or provided for.

It is only in a denial of confirmation upon the ground that the composition is unfair, or that it is not equitable, or that it is not for the best interests of the creditors, or that it is discriminatory, or perhaps, on some other of the grounds enumerated in the enactment (Section 83(e)), that the bankruptcy court by its act may be said to touch upon any fiscal or financial matter or policy of the state or of the debtor agency. So denying and thereby declining to interfere could not be called an act of interference.

The plan of composition of this appellant is a composition in its most simple and elemental form. It provides for the payment in cash of a stated percentage of the indebtedness in exchange for a release from the debt. It was prepared and perfected outside of the bankruptcy court and before the intervention of the bankruptcy court was sought. The rights of the many creditors who have accepted the plan are already fixed by their bargain. The dissenting appellees will, if the plan is confirmed, have their rights in the same measure and as fixed by the terms of the same proposal and not by any term or provision inserted therein or taken therefrom by any act of the court. No modifications or changes in the plan have been made. Needless to say, none are contemplated. No change or modification could be made without the written acceptance of the District (Sec. 83(e)). The terms of the plan or proposal are, in any event, as fixed by the agreement of the District. In the case here, therefore, it could not be said that the federal government by any act on its part interferes with any fiscal, financial or

other policy of the District or with any attribute of sovereignty it may be said to possess or with the sovereignty of the state. As applied to the case here, Chapter X is free of the constitutional infirmities of Chapter IX.

The Abby Dodge v. United States (1912), 223 U. S. 166 at 175, 56 L. Ed. 390 at 393;

Liverpool, N. Y. and P. Steamship Company v. Commissioners, etc. (1885), 113 U. S. 33 at 39, 28 L. Ed. 899;

Yazoo & Mississippi Valley R. R. Co. v. Jackson Vinegar Company (1912), 226 U. S. 217 at 219, 57 L. Ed. 193.

B. CHAPTER X IS SEPARABLE IN ITS PROVISIONS AND APPLICATIONS. THE APPELLANT DISTRICT IS OF SUCH NATURE AND ITS PLAN OF SUCH CHARACTER THAT NO ENCROACHMENT UPON OR INTERFERENCE WITH THE SOVEREIGNTY OF THE STATE CAN RESULT FROM ITS APPLICATION.

Another important difference which appears upon comparison of the two enactments lies in the fact that Chapter IX by its terms was limited in its application to political subdivisions.

Re Imperial Irrigation District (1936), 87 Fed. (2d) 355,

whereas Chapter X by its terms applies to the six separably enumerated kinds or classes of taxing agencies.

It might well be said that, in limiting the application of Chapter IX to "political" subdivisions, the Congress made it impossible for the courts to separably apply its provisions to a subdivision not possessed of any significant attribute of sovereignty.

Yu Cong Eng v. Trinidad (1926), 271 U. S. 500 at 518; 70 L. Ed. 1059,

particularly in view of the many previous decisions in nearly every court in the land which, in tax cases, eminent domain cases, tort cases, execution upon property cases, and no doubt other kinds of cases, turned upon the distinctions implicit in such words as "political," "public," "governmental" and the like, on the one hand and such words as "private," "corporate," proprietary" and the like, on the other hand. In such view the water district in the Ashton case was before the court in its character as a "political" subdivision necessarily exercising governmental functions, else it was not properly before the court at all. Any attempt to separably apply the provisions of Chapter IX to a subdivision which is non-political or to a non-political enterprise of a subdivision could only present a moot question.

In Chapter X the case is different. It contains an expression, in the clearest terms of which language is capable, of the legislative intent that it be a statute separable in its provisions and in its applications (Sec. 81).

Trade Mark Cases (1879), 100 U. S. 82 at 98; 25 L. Ed. 550, 553;

The Abby Dodge v. United States (1912), 223 U. S. 166 at 175; 56 L. Ed. 390;

Dorchy v. Kansas (1924), 264 U. S. 286 at 290; 68 L. Ed. 686;

National Labor Relations Board v. Jones & Laughlin Steel Corporation (1937), 301 U.S. 1 at 29; 81 L. Ed. 893. Obviously none of the constitutional consequences of encroachment upon or interference with the sovereignty of the states in the exercise of a power expressly conferred, can follow except there be an interference with or encroachment upon the sovereignty or some of its essential attributes. In the separable application of Chapter X in the instant case therefore, he who would invoke such a constitutional consequence should first clearly show the attribute of sovereignty being actually and appreciably encroached upon or interfered with in the constitutional sense.

Metcalf v. Mitchell (1926), 269 U. S. 514 at 524; 70 L. Ed. 384;

Willcuts v. Bunn (1931), 282 U. S. 216 at 234; 75 L. Ed. 304 at 312;

Trustees of the University of Illinois v. United States (1933), 289 U. S. 48 at 59; 77 L. Ed. 1025 at 1029;

Helvering v. Powers (1934), 293 U. S. 214 at 224; 79 L. Ed. 291;

Ohio v. Helvering (1934), 292 U. S. 360 at 369; 78 L. Ed. 1307.

This means a showing either (1) that the appellant district is of such a character and is so intimately connected with the sovereignty of the state in the exercise of the essentially governmental functions of the state that it cannot be touched by the federal government in the exercise of an express power, without thereby interfering with the state in its exercise of an essentially governmental function or (2) a showing that a burden, or an inter-

ference, or an encroachment, which is real, not imaginary, substantial and not negligible, results from the mere confirmation of the plan of this district for the composition of its previously existing indebtedness.

The appellant district is a local organization to secure a local benefit to be derived from the irrigation of lands from the same source of water supply and by the same system of works, and from which the state, or the public at large, derives no direct benefit, but only that reflex benefit which all local improvements confer.

City of San Diego v. Linda Vista Irrigation District, et al. (1895). 108 Cal. 189 at 193.

If it possesses any governmental powers at all it possesses only those appropriate for that single purpose.

In re Madera Irrigation District (1891), 92 Cal. 296 at 318.

Jenison v. Redfield, 149 Cal. 503

Any contention that it is inextricably connected with the sovereignty of the State of California finds no support in the decisions of the highest court of that state which would not result from the admitted impossibility (or undesirability) of formulating a rule by which the "political," "public" or "governmental" activities or functions of an agency are to be distinguished from its "private," "corporate" or "proprietary" activities or functions, in tort cases, eminent domain cases, execution upon property cases, and tax cases. In cases where the court has been more or less free from this confusion of precedent, the real nature and character of the district is more clearly revealed. Although such districts are by state law clothed with the usual immunity from tort liability and from

taxation and possess the right of condemnation, it was held in

Crawford v. Imperial Irrig. Dist. (1927), 200 Cal. 318

that an irrigation district is not a municipal corporation within the meaning of the rule of law prohibiting the expenditure of public funds unless authorized by statute, and in

Wood v. Imperial Irrig. District (1932), 216 Cal. 748

it was held that a provision in the State Bank Act permitting a bank to secure the deposits of cities, towns \* \* \* "and any other governmental or political subdivision" did not authorize a bank to secure the deposits of an irrigation district. With further reference to the status of an irrigation district as a "political subdivision" the California District Court of Appeal in

Huck v. Rathjen (1924), 66 Cal. App. 84

which involved the contest of an election of a director of an irrigation district brought under a statute authorizing such proceeding by any elector of "any political subdivision of either" (city or county) and presenting the single question whether or not an irrigation district was a political subdivision of a county, plainly said (page 85) that an irrigation district is "not a political subdivision at all." It was also held by the Supreme Court of California in

Bettencourt v. Industrial Accident Comm. (1917), 175 Cal. 559

that reclamation districts, organized under a statute very similar to the statute under which the appellant district is organized "possess no political or governmental powers, are not organized for political or governmental purposes and are therefore not public corporations at all."

It would therefore seem clear that the separable application of the provisions of Chapter X to the plan of composition of this appellant district cannot result in any interference with or encroachment upon the sovereignty of the state or of the district.

For the above reasons the judgment of the court below dismissing the petition and vacating the order to show cause should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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> Counsel for Appellant Lindsay-Strathmore Irrigation District.

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GUY KNUPP,
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Of Counsel for Appellant.

A copy of this brief has been served on opposing counsel.

JAS. R. McBride,

Counsel for Appellant.

#### APPENDIX "A".

"An act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

"Be It Enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', as approved July 1, 1898, and Acts amendatory thereof and supplementary thereto be, and they are hereby, amended by adding thereto a new chapter, to be designated 'chapter X', to be and read as follows:

## 'Chapter X

## 'Additional Jurisdiction

'Sec. 81. This Act and proceedings thereunder are found and declared to be within the subject of bank-ruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the taxing agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said taxing agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such taxing agencies or instrumentalities from the sale of water or power or both, or (d) from any combination

thereof; (1) Drainage, drainage and levee, levee, levee and drainage, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) any city, town, village, borough, township, or other municipality: Provided, however, that if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.

#### 'Definition

'Sec. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

'That the term "petitioner" shall include any taxing agency or instrumentality referred to in section 81 of this chapter.

"The term "security" shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

'The term "creditor" means the holder of a security or securities.

'Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

'The term "security affected by the plan" means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

'The singular number includes the plural and the masculine gender the feminine.

## 'Compositions

'Sec. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment dis-

trict having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. petition shall be accompanied by payment to the clerk of a filing fee of \$100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of the Uniform Bankruptcy Act of 1898, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have 'accepted it in writing. There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

"The "plan of composition," within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

'No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

'For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

'(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be

given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed at least sixty days before the date fixed for the hearing.

'At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted

the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained, shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interests; Provided, however, That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

'At the hearing or a continuance thereof, the judge may refer any matters to a special master for consideration, the taking of testimony, and a report upon special issues, and may allow reasonable compensation for the services performed by such special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for the services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing, and may apportion the amount so determined among the parties to the proceeding as may be just: Provided, however. That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other

representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States Circuit Court of Appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

'On thirty days' notice by any creditor to petition, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

'(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally

confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

- '(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims, owned, held, or controlled by the petitioner: *Provided*, *however*, That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor of class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.
- '(e) At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of

creditors; (2) complies with the provisions of this chapter, (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

'Before a plan is confirmed, changes and modifications may be made therein, with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance. within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: Provided, however, That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination

thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

- '(f) If an interlocutory decree confirming the plan is entered as herein provided, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it.
- '(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the

transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

- (h) This chapter shall not be construed as to modify or repeal any prior, existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: *Provided*, however, That the initiation of proceedings or the filing of a petition under section 80 shall not constitute a bar to the same taxing agency or instrumentality initiating a new proceeding under section 81 thereof.
- '(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

## 'Termination of Jurisdiction

'Sec. 84. Jurisdiction conferred on any court by section 81 shall not be exercised by such court after June 30, 1940, except in respect of any proceeding initiated by filing a petition under section 83 (a) on or prior to June 30, 1940.'

#### APPENDIX "B".

Section 401:

"§401. Intervention by United States; constitutionality of federal statute.

Whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act."

#### APPENDIX "C".

Section 349a:

"§349a. Direct appeal to Supreme Court; constitutionality of federal statutes; time; precedence.

In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order; and in the event that any such appeal is taken, any appeal or crossappeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of an appeal under this section, shall also be or be treated as taken directly to the Supreme Court of the United States. In the event that an appeal is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law."

#### APPENDIX "D".

REPORT BY COMMITTEE ON THE JUDICIARY ON H. R. 5969

(Sec. 4570) Report by the Committee on the Judiciary recommending the passage of H. R. 5969 which deals with the composition, through proceedings in bankruptcy, of the indebtedness of insolvent taxing agencies.

H. R. 5969 was introduced by Mr. Summers of Texas in the House of Representatives on March 29, 1937. The bill proposes to amend the Bankruptcy Act by adding a chapter to be known as chapter X. It provides for the composition, through proceedings in bankruptcy, of the indebtedness of insolvent taxing agencies such as various improvement districts, and certain towns, cities, boroughs, and townships. The bill was immediately referred to the Committee on the Judiciary and on March 31, 1937, Mr. Chandler, from the Committee, submitted a report in which it was stated that the Committee after consideration favored the bill and recommended its passage. The report in full text follows.

This bill is the outgrowth of public hearings by the Subcommittee on Bankruptcy of the Committee on the Judiciary on H. R. 2505, H. R. 2506, and H. R. 5403, dealing with the same subject, namely, the composition, through proceedings in bankruptcy, of the indebtedness of insolvent taxing agencies such as drainage, levee, water, irrigation, sewer, road, school, port, and similar improvement districts, and certain towns, cities, boroughs, and townships.

Compositions are approvable only when the districts or agencies file voluntary proceedings in courts of bank-ruptcy accompanied by plans approved by 51 per cent of all the creditors of the district or agency, and by evidence

of good faith. Each proceeding is subject to ample notice to creditors, thorough hearings, complete investigations, and appeals from interlocutory and final decrees. The plan of composition cannot be confirmed unless accepted in writing by creditors holding at least 66 2/3 per cent of the aggregate amount of the indebtedness of the petitioning district or taxing agency, and unless the judge is satisfied that the taxing district is authorized by law to carry out the plan, and until a specific finding by the court that the plan of composition is fair, equitable, and for the best interests of the creditors.

The jurisdiction conferred in the bill terminates on June 30, 1940. One of the primary purposes of the measure is to enable, under proper safeguards, the rehabilitation and reorganization of those taxing districts and agencies which were in process of rearranging and refinancing their obligations under chapter 345 of the Public Acts of the Seventy-third Congress, sections 78, 79 and 80 (48 Stat. 798; title 11, U. S. C., secs. 301, 302, and 303, as amended), when the United States Supreme Court declared that act unconstitutional in the case of Ashton v. Cameron County Water District (298 U. S. 513) (Sec. 152). However, any insolvent taxing district or agency may apply for composition under the provisions of this bill, and the need for the legislation is clearly shown by the testimony presented at the hearings.

The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to, and believes that H. R. 5969 is not invalid or contrary to the reasoning of the majority opinion in the 5-to-4 decision. The act which was declared unconstitutional designated the instrumentalities included in its provisions as political subdivisions of the

State, and the Supreme Court determined that it was beyond the power reposed in Congress by article I, section 8, clause 4, of the Federal Constitution, "To establish \* \* \* uniform laws on the subject of bankruptcies," to pass an act to interfere with the States in the control of their fiscal affairs.

The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable, and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill.

As the statute which was declared unconstitutional was held to be within the subject of bankruptcies and uniform in its application, a fortiori, the present bill is adequately related to the general subject to bankruptcies, and does not conflict with the fifth amendment of the Federal Constitution as to due process of law. Ashton v. Cameron County Water District (298 U. S. 513); Continental, etc. Co. v. C. R. I. & P. Ry. (294 U. S. 648); Louisville Joint Stock Land Bank v. Radford (295 U. S. 555).

The constitutional provision authorizing Congress to establish uniform laws on the subject of bankruptcies contains no exceptions. It is only because the bankruptcy power was authorized in the same section of the Constitution which confers the Federal power to lay and collect taxes that the former power is impliedly limited by the judicial construction placed on the latter power for the

purpose of preserving the independence and sovereignty of the States. Granted the limitation of the Federal taxing power, if the pending bill does not and cannot restrict the control of a State agency over its fiscal affairs, the statute would not be invalid. The States themselves are subject to taxation by the Federal Government except as to operations which are essentially governmental in their nature, and "the immunity of the States from Federal taxation is limited to those agencies which are of a governmental character." (South Carolina v. U. S. (199 U. S. 437); Ohio v. Helvering (292 U. S. 36-60).

In other words, "the implied limitation on the Federal taxing power, springing from the necessity of maintaining our dual system of Government, does not extend beyond" that necessity; and the bankruptcy power is subject to like interpretation, Board of Trustees of Illinois v. United States (289 U. S. 48).

In construing the implied limitation on the Federal taxing power, the cases have been determined on their facts, and if there was no actual interference with essential governmental functions of a State or its agencies, the exercise of the taxing power has been sustained. This rule of construction applies with equal force and effect to the power to establish uniform laws on the subject of bankruptcies, and in itself, justifies the passage of the pending bill to meet conditions deserving legislative assistance.

Therefore, the applicability of the pending bill to any taxing district or agency rests on the corporate character

of each petitioner and depends on the actual interference, if any, with its essential governmental functions; and the saving clause in section 81 of the bill is designed to sustain the measure as to others if any one or more of the taxing agencies classified therein should be held to be political subdivisions exercising sowereign powers.

This bill is intended to remove an apparent impasse, and the committee believes that it will be welcomed by debtors and creditors. When a municipality or a taxing district is insolvent, the creditors cannot foreclose their mortgage, or cause public property to be sold and the proceeds distributed. They must look to the exercise of the taxing power over a period of years, or, in cooperation with the debter district, must grant extensions. This often involves reorganization of part or all of the debt structure, and hinges upon agreement by debtor and creditor, or on the existence of a Federal statute which may force recalcitrant minority creditors into agreement. Otherwise the creditors of a municipality or a taxing district must resort to mandamus proceedings, which have not been adequate remedies. In fact, the trend of recent decisions has been to deny the writ of mandamus wherever sound judicial discretion justifies denial. Hence, creditors have been unable to obtain unjust advantage, but the problem of the municipality or taxing district has remained unsolved. Christmas v. City of Asbury Park (78 Fed. (2d.) 1003). For an embarrassed debtor without the remedy afforded by this bill, the only effective recourse is the repeal of its charter by the State legislature, in which

event creditors are generally left without any remedy. Meriwether v. Garrett (102 U. S. 472, 501).

There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts. Therefore, relief must come from Congress, if at all. The committee are not prepared to admit that the situation presents a legislative no-man's land. The power to deal with bankruptoies was given by the Constitution to Congress without express limitation, and, at the same time, the States deprived themselves of the power to deal adequately with the conditions which have arisen. Only analogous judicial construction has blocked the way thus far. It is the opinion of the committee that the present bill removes the objections to the unconstitutional statute, and gives a forum to enable those distressed taxing agencies which desire to adjust their obligations and which are capable of reorganization, to meet their creditors under necessary judicial control and guidance and free from coercion, and to affect such adjustment on a plan determined to be mutually advantageous.

Historically the early bankruptcy statutes were of limited duration, and were intended to provide methods whereby insolvent and failing debtors could be relieved of overwhelming burdens and thus be enabled to make a new start under favorable conditions which generally followed periods of great depression. This bill has a 3-year limitation. That is considered ample time to effect necessary compositions. Permanent, legislation of this character

would tend to effect adversely the financial problems of taxing agencies, and the committee, while not expecting unfailing foresight by public officials, cherishes the view that public contracts, especially, 'should be scrupulously performed whenever possible.

As an aid to insolvent taxing districts, Congress has authorized the Reconstruction Finance Corporation to make loans to such instrumentalities within safe limits as to security and duration. Through this channel, districts and agencies eligible for relief under the pending legislation can apply to the Reconstruction Finance Corporation for sufficient funds to compose their debts. Many acceptable applications are now pending, and others will be made if this bill is enacted into law. Many defaults in public obligations can be removed, and the welfare of thousands of citizens can be promoted by the passage of the bill.

# SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM. 1937.

No. 772

LINDSAY-STRATERIOR INEGATION DISTRICT

Analysis

pointed by the Will of Marrie Bekens, Technical

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IN THE

# SUPREME COURT

OF THE
UNITED STATES

OCTOBER TERM, 1937

No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

V.

MILO W. BEKINS and FRED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

### BRIEF OF AMICI CURIAE FOR THE STATE OF WASHINGTON

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IN THE

# SUPREME COURT

OF THE

### UNITED STATES

OCTOBER TERM, 1937

No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

V

MILO W. BEKINS and FRED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

# BRIEF OF AMICI CURIAE FOR THE STATE OF WASHINGTON

#### STATEMENT

The Legislature of the State of Washington has a law creating and maintaining the State Department of Conservation and Development. The Director of that Department, among other things, is charged with the authority and duty of rendering engineering and financial assistance to districts organized for the reclamation and develop-

ment of agricultural lands in the state. The Director is authorized to loan money to these districts and to accept the bonds thereof as evidence of such loans. (Rem. Rev. St. of Washington, Sec. 3004 et seq.) Several million dollars have been loaned to districts in this connection. The Attorney General of the state is by law the legal advisor of this Department. (Rem. Rev. St. of Washington, Secs. 112; 11032.) These local reclamation districts are included within the scope of the Local Taxing Agency Bankruptcy Composition Act of August 16, 1937 (11 U. S. C. A. Chap. 10, p. 1222) under examination in this case. The State of Washington and its officers, therefore, are vitally interested in the issues involved in the above entitled cause and the undersigned appreciate the opportunity of making the following observations as Amici Curiae for such consideration as these observations may seem to suggest.

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#### ARGUMENT

Issues Limited to Constitutionality of Act Under Tenth Amendment

The appeals in this cause, as we understand, have een taken here under the provisions of the Act of August 4 1937 (28 U. S. C. A. Sec. 349a, p. 40) and the only usue involved is that of the constitutionality of the Local axing Agency Bankruptcy Composition Act of August 6, 1937 (11 U. S. C. A. Chap. 10, p. 1222). The issue of constitutionality, it appears, is also limited to the one equiry whether the Act in question authorizes unreasonable impairment of state sovereignty in violation of the enth Amendment of the Constitution of the United tates.

# 2. GOVERNMENTAL CHARACTER OF TAXING AGENCIES COMING WITHIN ACT NOT IN DISPUTE

The scope of the Act in question is limited to certain asses of local taxing agencies designated therein. The ct deals with the composition of indebtedness of these cal taxing agencies under the bankruptcy powers of ongress conferred by Section 8, Article 1 of the Federal onstitution.

In the case of Ashton v. Cameron County Water Improvement Dist. No. 1, (1936) 56 Sup. Ct. 892, 298 U. S. 13, 80 L. Ed. 1309, this court held that the Municipal ebt Readjustment Act of May 24, 1936 (11 U. S. C. A. hap. 9, p. 1212) was unconstitutional. The unconstitutional Act was somewhat broader in scope, dealt with funicipalities and other political subdivisions of the state at included most if not all the classes of taxing districts numerated in the new Act. In the unconstitutional Act nese local taxing units are referred to as political subvisions of the state and in the last Act they are referred

to as taxing agencies or instrumentalities. Both Acts, however, refer in the main to the same identical agencies so far as these agencies are included in the last Act.

These references to classes of local taxing agencies, in our view, are made for purposes of identification only and are not made with any legislative intent to define the nature and legal status of these agencies. Manifestly, these agencies are creatures of the state, subject to change at any time by state law.

The nature and legal status of these local agencies have been built up through years of state judicial and legislative experience. Property values and taxing policies have been and are being established upon generally accepted concepts regarding these agencies which are all matters of exclusive state control.

The nature and legal status of these taxing agencies are not, therefore, changed by the new law merely by a change in nomenclature. With the exception of counties and parishes omitted in the new Act, both Acts deal substantially with the same identical classes of agencies. The manifest intent of both Acts is to deal with certain designated local taxing units, which are the same in both Acts, regardless of the identifying name by which they are designated.

The character of these taxing agencies then does not appear to be in dispute here. They are agencies of the state and they perform certain governmental functions.

New Orleans v. Morris (1881) 105 U. S. 600, 602, 26 L. Ed. 1184;

Shoemaker v. U. S. (1893) 147 U. S. 282, 297, 37 L. Ed. 170, 13 Sup. Ct. 361;

- Fallbrook v. Bradley (1896) 164 U. S. 112, 174, 41 L. Ed. 369, 17 Sup. Ct. 56;
- O'Neill v. Leamer (1915) 239 U. S. 244, 251, 60 L. Ed. 249, 36 Sup. Ct. 54;
- Houck v. Little River District (1915) 239 U. S. 254, 261, 60 L. Ed. 266, 36 Sup. Ct. 58;
- Roberts v. Richland Irr. District (1933) 289 U. S. 71, 77 L. Ed. 1038, 53 Sup. Ct. 519;
- Brush v. Commissioner (1937) 300 U. S. 352, 366, 81 L. Ed. 691, 57 Sup. Ct. 495.

These local taxing districts are considered state agencies by the state courts in the following cases:

- Morrison v. Smith Bros. (Cal. 1930) 293 Pac. 53;
- Sutro Heights Land Co. v. Merced Irr. Dist. (Cal. 1931) 296 Pac. 1098;
- Yale v. Modesta Irr. Dist. (Cal 1932) 13 Pac. (2d) 908;
- Rathfon v. Fayette Oregon Slope Irr. Dist. (Ore. 1915) 149 Pac. 1044;
- Twohy Bros. Co. v. Odioco Irr. Dist. (Ore. 1922) 210 Pac. 873, 216 Pac. 189;
- Brown Bros. v. Columbia Irr. Dist. (Wash. 1914) 144 Pac. 74;
- Shimada v. Diking Dist. of Skagit County (Wash. 1925) 245 Pac. 916;
- Washington Nat. Inv. Co. v. Grandview Irr. Dist. (Wash. 1933) 28 Pac. (2d) 114;
- Mola v. Metropolitan Park Dist. (Wash. 1935) 42 Pac. (2d) 177.

The question here is not whether these taxing agencies perform governmental functions—that may be asassumed as true—but whether the Act in question authorizes an unconstitutional interference with the exercise of these functions. 3. Relation of Fifth Amendment to Act Settled by Previous Decisions

It has been suggested that the Act involved violates the Fifth Amendment of the Federal Constitution. It appears to us that this question has already been disposed of by the decision of this court involving the Interstate Railroad Reorganization Act (11 U. S. C. A. Sec. 205, p. 1017) in the case of Continental Ill. Nat. Bank v. Chicago R. I. & P. Ry. Co. (1935) 294 U. S. 648, 79 L. Ed. 1110, 55 Sup. Ct. 595.

Without attempting to go into the history of the law of bankruptcy in this country—a very instructive historical statement is found in the Continental Bank case supra—it may be stated that recently there have been extensions enacted in the bankruptcy law. The most notable examples are found in:

- 1. Agricultural Compositions and Extensions Acts (11 U. S. C. A. Sec. 203, p. 974);
- Interstate Railroad Reorganization Acts (11 U. S. C. A. Sec. 205, p. 1017);
- Corporate Reorganization Acts
   (11 U. S. C. A. Sec. 207, p. 1057).

The relation of each of these Acts to the Fifth Amendment of the Federal Constitution has been considered by this court in the following cases:

(Agricultural Compositions and Extensions Acts) Wright v. Vinton Branch etc. (1937) 300 U. S. 440, 81 L. Ed. 736, 57 Sup. Ct. 556;

(Interstate Railroad Reorganization Acts) Continental III. Nat. Bk. v. Chicago R. I. & P. Ry Co. (1935) 294 U. S. 648, 79 L. Ed. 1110, 55 Sup. Ct. 595;

(Corporate Reorganization Acts) In re Wetherbee Court Corp. (1937) 88 Fed. (2d) 251 certiorari denied 57 Sup. Ct. 931.

In each of these cases, the court held that this section (Fifth Amendment) of the Federal Constitution is not violated.

The Act in question in the instant case is no greater transgressor of this constitutional provision than the other recent bankruptcy acts. All bankruptcy acts may legally impair contracts indirectly and incidentally. Continental Bank v. Rock Island Ry., supra. This Act may possibly do the same, but such effect is constitutionally justified on the same grounds as in the case of the other recent acts approved by this court. These issues have been settled by the decisions above mentioned and present no constitutional problem in this case.

# 4. ACT MEETS UNIFORMITY REQUIREMENTS OF CONSTITUTION

It will be conceded, we assume, that the Act meets the uniformity requirements of the Federal Constitution.

Hanover Nat. Bk. v. Moyes (1902) 186 U. S. 181, 46 L. Ed. 1113, 22 Sup. Ct. 857;

Stellwagen v. Clum (1917) 245 U. S. 605, 62 L. Ed. 507, 38 Sup. Ct. 215.

The only issue here then is whether the Act in question authorizes the impairment of state sovereignty in violation of the Tenth Amendment of the Constitution of the United States.

### 5. STATE ATTITUDE WORTHY OF CONSIDERATION

The State of Washington passed legislation authorizing local taxing districts to accept the privileges of the Act of May 24, 1934 (Rem. Rev. St. of Washington, Sec. 5608-1 et seq.). Similar legislation has been passed by some of the other states. Ashton v. Cameron County Dist. (1936) 298 U. S. 513, 539, 56 Sup. Ct. 892, 80 L. Ed. 1309. While state legislation cannot enlarge the power of Congress, it shows state policy in this connection. The implication of state sovereignty is that the state itself has some part in construing its sovereign powers and the attitude of the state in a given situation is a matter which the court may properly consider in determining whether a Federal statute impairs state sovereignty.

# 6. State Agencies Accept Benefits of the Federal Bankruptcy Laws in Certain Instances

In any event, state sovereignty does not constitute a quarantine against all participation by state agencies in the benefits of the Federal Bankruptcy Laws. Under their general authority to sue and be sued, these agencies are authorized to prove their claims against a bankrupt. They are also authorized to litigate their bankruptcy claim rights in the bankruptcy court. The same rule applies to states. N. Y. v. Irving Trust Co. (1933) 288 U. S. 329, 77 L. Ed. 815, 53 Sup. Ct. 389. Aside from the bankruptcy statutes, these local agencies are authorized to compromise claims. Louisiana v. Jack (1917) 244 U.S. 397, 61 L. Ed. 1222, 37 Sup. Ct. 605. They may also enter into arbitration agreements. Alameda County Water District v. Spring Valley Water Co. (Cal. 1924) 227 Pac. 953. Obviously the exercise of these privileges on the part of these agencies involving certain discretionary powers concerning their contracts and obligations, cannot be considered an impairment of state sovereignty; on the contrary, the exercise of these privileges is in the interest

of state sovereignty. It follows, therefore, that there are certain privileges which a state agency may at its option rightfully exercise under the bankruptcy laws. The problem here is to ascertain whether the Act in question offers privileges which the state agency cannot accept and fulfill without violating some constitutional provision.

### 7. ESSENTIAL FEATURES OF ACT IN QUESTION

The essential features of the Act with which we are here concerned are (11 U. S. C. A. Chap. 10, p. 1222):

- 1. That the debts are discharged upon the basis of appraisal of the debtor's assets with extension of time for payment rather than upon the basis of immediate and forced sale of assets and application of the proceeds therefrom to the debts so far as such proceeds will go, and the debtor is permitted to continue in business.
- 2. That a majority of the creditors, placed at so large a percentage of them as to amount substantially to a virtual representation thereof, is given authority to enter into voluntary agreements of composition, governing the entire indebtedness of the class of indebtedness involved, with a debtor, which debtor is not required in order to make an offer of composition to have been adjudged a bankrupt.

The provisions of the general bankruptcy law which might be construed when applied to state agencies to interfere with state sovereignty are eliminated from this Act. It does not in any material sense interfere with the debtor's exercise of its essential governmental functions. Its incidence, so far as any compulsion is concerned, is on the minority creditors and it is calculated to free the practical ability of the debtor to exercise its governmental functions. It is essentially a composition statute. Com-

positions under the Act are voluntary agreements between the debtor and the creditor. The compulsion of the minority is an incident and not the compelling basis of the settlement. It is a compulsion not exclusively for the benefit of the debtor but for the benefit of the majority of the creditors as well. It is the exercise of a power required for the protection of the majority creditors and does not involve the sovereign rights of the state except in a most negligible manner.

#### 8. Court's Function Is Limited

The Act does not authorize the Federal Courts to exercise control over any essential governmental function of the debtor agency. The agency control has already been exercised by the debtor agency itself by its decision to file the petition and by its offer of composition. The court is not authorized to determine the terms of the composition. This determination has been made by the debtor agency in its offer. The court's function is limited principally to the ascertainment of the sufficiency of the petition and its compliance with the provisions of the Act, and of the good faith of the parties, to the enforcement of the procedural requirements of the Act and to the enforcement of the agreement of composition already made between the debtor and the required number of its creditors. The apparent interference with state sovereignty involved in the incidental compulsion of the minority creditors in reality enhances state sovereignty in that it makes the practical exercise of state sovereignty possible in the premises.

The acceptance of the privilege made available by the new Act is optional in any instance with the debtor agency. While this optional feature does not confer any additional power upon the debtor, it does limit the power of the bankruptcy court and it is one of the features which, in our view, brings the Act within constitutional requirements.

#### 9. FIRST ACT BROADER IN SCOPE

The first Act (11 U. S. C. A. Sec. 303 et seg.) was broader in its scope than the Act involved here. This is especially true by implication and it is also true by specific provision. The first Act gave the court authority over the readjustment of the obligations of the debtor, independent of the consent of the district or of its creditors. For example, the court was authorized, with the approval of the taxing district, to direct the rejection of its contracts executory in whole or in part, without the consent of the other party of the contract. (11 U. S. C. Sec. 303 sub-sec. (c) (5), p. 1215.) No such authority is provided in the new Act. While the first Act denied to the court the authority to interfere with any of the political or governmental powers of the taxing district, it did extend to the court the power to determine what property or revenues of the taxing district were necessary for essential governmental purposes. (11 U. S. C. A. Sec. 303 sub-sec. (c) (11) (c), p. 1216.) In the new Act the power of judicial opinion in this respect is eliminated and the exemption of the district property and revenues necessary for essential governmental purposs is guaranteed to the debtor as an absolute right. (11 U. S. C. A. Sec. 403 sub-sec. (c) (b), p. 1226.) The first Act related to the readjustment of the obligations of the debtor and carried with it an implication of power on the part of the court to pass upon the terms of the debt settlement and the means by which the settlement was to be effected without due regard to the exclusive right of the taxing district to continue the exercise of its governmental functions without outside interference. The powers over debtor districts conferred by the Act upon the court was thought to interfere with the governmental functions of these districts and was banned by this court in the case of Ashton v. Cameron County Dist. (1936) 298 U. S. 513, 80 L. Ed. 1309, 56 Sup. Ct. 892.

#### 10. Congressional Endeavor to Correct Constitutional Ojections

In an endeavor to correct the constitutional objections of the first Act, Congress, after full consideration, passed the Act involved in the instant case. The objects of the New Act within its restricted scope are essentially the same as that of the original Act but the attempt to obviate any substantial interference with the governmental functions of the taxing agency debtors is apparent throughout the Act. Reenactments designed to meet objections called to attention by the judiciary are frequently favorably considered by the courts where such objections are substantially met.

Hill v. Wallace (1922) 259 U. S. 44, 66 L. Ed. 822, 42 Sup. Ct. 453;

Chicago Board of Trade v. Olson (1923) 262 U. S. 1, 67 L. Ed. 839, 43 Sup. Ct. 470;

Liability Cases (1907) 207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141;

Second Employers' Liability Cases (1912) 223 U.S. 1, 56 L. Ed. 327, 32 Sup. Ct. 169;

Wright v. Vinton Branch (1937) 300 U. S. 440, 81 L. Ed. 736, 57 Sup. Ct. 556.

The Act in question enlarges the scope of the bankruptcy law as applied to local governmental agencies but it carries no innovation in principle from that involved in Agriculta Reorgal Acts to which to Acts is function ness battensions between

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A s legislation mental and inco extension statutes above mentioned, including the icultural Relief, Interstate Railroad, and Corporate rganization, Acts. Different features appear in these is to adapt them to the necessities of the situation to the they are applicable. The underlying basis of these is the same, namely, to permit a continuation of the ctions of the debtor, by a re-examination of indebted-based upon appraisals rather than sale, upon debt exions, and upon compositions voluntarily entered into veen the debtor and a substantial majority of the litors.

The local taxing agencies covered by the Act in questions exercise business functions in furtherance of the governmental objects of their creation. The Act in question is not extend its powers outside these business functions. It extends privileges which the debtor and the litors, at their option, may accept for their manifest had benefit. In the matter of tax exemption, this it has established a line between immediate governmental functions and approved denial of tax exemption where the tax, aligh related somewhat to governmental activity, lays lirect burden upon a governmental instrumentality constitutes only remote, if any, influence upon the cise of the functions of government.

Helvering v. Mountain Producers Corp., No. 600 r. 7, 1938) — Sup. Ct. —, and cases therein cited.

A similar principle of distinction between Federal lation which interferes directly with state governtal functions and that which relates only remotely inconsequently to such functions might be recognized

in the instant case. The law in question does not impair the authority of the debtor taxing agencies fully to exercise their respective governmental functions, and in our view, does not constitutionally impair state sovereignty.

## 11. State Sovereign Rights in Their Relation to Federal Powers

The sovereign rights of the states under our constitutional system must be considered in their relation to the powers of the Fderal govrnment. It is not reasonable that the surrender by the states of part of their sovereignty to the central government through the Constitution of the United States should be construed to prevent the practical exercise of their reserved sovereign rights.

The states have surrendered plenary and paramount authority over bankruptcy to the central government by Clause 4, Section 8 of Article 1 of the Federal Constitution.

- Campbell v. Alleghany Corp. (1935) 75 Fed. (2d) 947 certiorari denied 296 U. S. 581, 80 L. Ed. 411, 56 Sup. Ct. 92;
- N. Y. v. Irving Trust Co. (1933) 288 U. S. 329, 77 L. Ed. 815, 53 Sup. Ct. 389.

When a local taxing agency of a state becomes insolvent it falls short of carrying out its governmental functions. These functions involve the exercise of the reservd rights of state sovereignty. Having surrendered all bankruptcy powers, the state becomes powerless in this situation, and its sovereignty in this particular must atrophy unless the central government has authority to offer an opportunity for relief.

#### 12. CONCLUSION

The Act in question is designed to meet a peculiar constitutional situation arising out of our dual system of Federal and state sovereignties. The Act allows a continuation of the governmental functions of the local taxing agencies without exerting any substantial control over them and affords a practical means of protection for their creditors. The acceptance of the privileges of this Act on the part of these taxing agencies therefore cannot reasonably be construed as an impairment of state sovereignty, and the Act should be sustained.

Respectfully submitted,

G. W. HAMILTON, Attorney General of the State of Washington,

Fred J. Cunningham,
Special Counsel,
As Amici Curiae.

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### IN THE

### Supreme Court of the United States.

OCTOBER TERM, 1987

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#### IN THE

### Supreme Court of the United States

OCTOBER TERM, 1937

MILO W. BEKINS AND REED J. BEKINS, AS TRUSTEES
APPOINTED BY THE WILL OF MARTIN BEKINS,
DECEASED, ET AL.

Appellees.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF AS AMICI CURIAE IN SUPPORT OF APPELLANT

## MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

May It Please the Court:

The undersigned, Jack Holt, Attorney General of the State of Arkansas, and Chas. D. Frierson, as attorney for several drainage districts, respectfully move this Honorable Court for leave to file the accompanying brief in this cause as amici curiae.

Attorney General of Arkansas.

CHAS. D. FRIERSON,

Attorney for Drainage District No. 7 of Poinsett County and Cache River Drainage District of Craighead, Jackson and Lawrence Counties, Arkansas. BRIEF OF ATTORNEY GENERAL OF ARKANSAS AND CHAS. D. FRIERSON, ATTORNEY FOR CER-TAIN DRAINAGE DISTRICTS, AS A MICI CURIAE IN SUPPORT OF APPELLANT

I.

#### PRELIMINARY STATEMENT

The State of Arkansas has a deep interest in this controversy because a vast area of its richest land has been reclaimed by drainage and levee districts. Said districts have issued millions of dollars in bonds and, owing to the depression and also to floods and levee breaks, the lands have not been able to produce crops of sufficient money value to pay the tax burdens and many of the bond issues were hopelessly in default. Consequently the landowners also ceased to pay State and county taxes and the State lost much revenue and acquired title to a great deal of forfeited land.

Congress provided that Reconstruction Finance Corporation might lend money to these districts to refinance their debts. Such refinancing proved highly beneficial to bondholders as well as to taxpayers and in nearly every case the vast majority of bondholders were willing to accept the composition offered. However, in practically every district a small minority refuses the offer and demands full payment of the original debt and interest. In nearly every large issue also some of the bonds are unavailable for settlement because they are hampered by trust agreements and in many instances blocks of the original bonds cannot be located. Thus in many cases there is litigation after the

first disbursement of Reconstruction Finance Corporation loan and there appears to be no possibility of finally winding up the refinancing program unless some such plan as the debt composition act in question can be established.

Drainage District No. 7 of Poinsett County and Cache River Drainage District of Craighead, Jackson and Lawrence Counties, Arkansas, were both hopelessly insolvent; both were offered loans by the Reconstruction Finance Corporation. Both made a complete compromise with a large majority of their creditors and as to each of them a minority is seeking full payment of individual claims. In each case some few bonds cannot be found or are prevented from taking any part because of trust agreements or the like. Both districts have filed proceedings under the debt composition act and both therefore will be affected by the determination of this appeal. Many other districts are affected in a similar manner.

We contend that the new debt composition act, U S C A Title 11, Chapter 10, Sections 401 to 404, inclusive, is constitutional and is an act on the subject of bankruptcies within the powers of Congress.

#### П.

#### ARGUMENT

The Act of Congress for the composition of indebtedness of local taxing agencies, being amendment to the Bankruptcy Act, U S C A Title 11, Chapter 10, Sections 401 to 404, inclusive, is a valid and uniform act on the subject of bankruptcies, does not invade the reserved powers of the States and is constitutional for the following reasons:

#### FOINT A

A TAXING AGENCY, SUCH AS A DRAINAGE DISTRICT OR OTHER IMPROVEMENT DISTRICT IN ARKANSAS AND MANY OTHER STATES, IS NOT A POLITICAL SUBDIVISION NOR AN ARM OF THE STATE FOR ANY GOVERNMENTAL PURPOSE, BUT IS AN AGENCY OF THE TAXPAYERS

In Arkansas and many other States a drainage, levee or other special improvement district is definitely NOT an arm of the State for any general governmental purpose. It is only a public quasi-corporation given for very limited purposes the power to collect special assessments based on benefits to real estate within a limited area and the power of eminent domain within the same limits. Its governing board is an agency for its taxpayers. It may sue and be sued just the same as private corporations (except for a partial Immunity from tort actions). It may compromise and adjust claims as an incident to its right to litigate.

Hence we respectfully contend that the debt composition act does not invade State sovereignty nor interfere with any reserved powers of the State.

"Hence it will be seen that, if the proposed acts of Drainage District No. 7 of Poinsett County were to be committed by a railroad corporation, by a private corporation, or by a private person, the venue of the action would be in Cross County, where the land is situated and service would be had upon the defendant in Poinsett County, where the act sought to be enjoined was alleged to be committed. But it is insisted that this rule does not apply to a drainage district. We do not agree with counsel in this contention. It is true that drainage districts, levee districts, and road improvement districts are created by statute, and have only such powers as are expressly or impliedly conferred upon them. They are quasi-public corporations with power to sue and be sued with reference to the matters conferred upon them. Altheimer v. Board of Directors of Plum Bayou Levee District, 79 Ark. 229, 95 S. W. 140; Board of Directors of St. Francis Levee District v. Fleming, 93 Ark. 490, 125 S. W. 132; and Board of Levee Inspectors of Chicot County v. Southwestern Land & Timber Company, 112 Ark. 467, 166 S. W. 589. According to these and numerous other decisions of this court, local improvement districts and their commissioners are governmental agencies created as quasipublic corporations deriving their powers directly from the Legislature and exercising them as the agent of the property owners in the district whose interests are affected by the duties they perform. They exercise no governmental powers except those expressly or impliedly granted by the Legislature. They are not political or civil divisions of the State like counties and municipal corporations created to aid in the general administration of the government. They are not created for political purposes or for the administration

of civil government. Hence no public policy would be violated by applying the same rules for the service of process upon them as are prescribed for private corporations and quasi-public corporations, such as railroads, etc."

Drainage District 7 v. Hutchins, 184 Ark. 520 (42 S. W. 2d 996).

Following the above case and others the United States Circuit Court of Appeals for the Eighth Circuit held a drainage district does not partake of the State's immunity to suit and is subject to equity jurisdiction and is not a governmental agency.

Drainage District No. 2 v. Mercantile Commerce Co., 69 F. (2d) 138.

In Arkansas a judgment creditor may even levy an execution upon lands forfeited to a drainage district under foreclosure proceedings for delinquent assessments.

Keith v. D. D. 7, 183 Ark. 786 (38 S. W. 2d 755).

#### POINT B

DRAINAGE AND OTHER IMPROVEMENT DISTRICTS, AND EVEN COUNTIES AND SCHOOL DISTRICTS, HAVE BEEN SUED IN FEDERAL COURTS IN MANY INSTANCES AND HENCE IT IS CERTAIN THAT THEY DO NOT PARTAKE OF THE STATE'S IMMUNITY TO SUIT

So well established is this jurisdiction that in one of the early cases Mr. Justice Brewer said:

"It may be observed that the records of this court for the last thirty years are full of suits against coun-

ties, and it would seem as though by general consent the jurisdiction of the Federal courts in such suits had become established. But, irrespective of this general acquiescence the jurisdiction of the circuit courts is beyond question. The Eleventh Amendment limits the jurisdiction only as to suits against a State."

Lincoln County v. Luning, 133 U. S. 529 (33 L. Ed. 766).

The following are merely a few of the cases against taxing districts decided in this court:

- County of Mercer v. Hackett, 1 Wall 83 (17 L. Ed. 548).
- Com'rs Knox County v. Aspinwall, 21 How. 539 (16 L. Ed. 208).
- Hopkins v. Clemson College, 221 U. S. 636 (55 L. Ed. 890).
- Guardian Sav. & Trust Co. v. Road Imp. Dist. 7, 267 U. S. 1 (69 L. Ed. 487).
- Commissioners v. St. Louis S. W. Ry., 257 U. S. 547 (66 L. Ed. 364).
- Mercantile Trust v. Wilmot Road Dist., 275 U.S. 117 (72 L. Ed. 192).
- Graham v. Folsom, 200 U. S. 248 (50 L. Ed. 464).
- Folsom v. Township Ninety-six, 159 U. S. 611 (40 L. Ed. 278).

Particularly we call attention to the cases of Guardian Savings Company against the Road District, and Mercantile Trust Company against Wilmot Road District, supra, both of which affect Arkansas improvement districts and in one the appointment of a receiver was sustained and in the other fees for the trustee and his attorney were sustained.

As a defense in the receivership case it was contended that a receiver could not be appointed to collect taxes or special assessments and as a defense in the case concerning fees it was contended that the special assessments were levied for a public purpose limited by the statute and could not be diverted to pay costs; yet in each case the district was treated practically as if it were a railroad or other corporation charged with a public interest and complete jurisdiction was assumed over its affairs.

The right to appoint a third person as receiver was repealed by an act of 1933 in Arkansas, but the courts hold that the commissioners themselves may be constituted receivers and perform like duties.

Drainage Dist. v. Mercantile-Commerce, (CCA 8) 69 F. (2d) 138, supra.

#### POINT C

SINCE SUCH ADVERSE SUITS AS ABOVE CITED DO NOT CONSTITUTE AN INVASION OF STATE SOVEREIGNTY, NOR AN INTERFERENCE WITH THE RESERVED POWERS OF THE STATE, CERTAINLY A VOLUNTARY FRIENDLY COMPOSITION WITH CREDITORS CANNOT INVADE STATE SOVEREIGNTY

In the case of Ashton v. Cameron County Water District, 298 U. S. 513 (80 L. Ed. 1309), the majority opinion relies largely upon authorities concerning taxes by States on Federal agencies or the reverse. The foregoing authorities seem to us much more nearly in point as precedents in the present appeal.

The Federal Courts do not hesitate to invade the affairs of a school or drainage district and even of a county and to levy and collect a tax or a special assessment, and even to appoint a receiver when the State law permits, and all these remedies are granted in adversary litigation and against the State's express objection and that of its subordinate agencies and officers. The courts hold that these agencies have a right to contract and to sue and be sued and therefore may be compelled to carry out their contracts and pay their debts even though to a limited extent they are State agencies.

In Arkansas, as pointed out above, special improvement districts are agencies of taxpayers rather than of the State; but the authorities uphold such suits even against counties which clearly are much more political in their character than are improvement districts.

The debt composition proceeding, even if applied to a purely political subdivision, is not really an invasion nor interference with the affairs of a State because in the most explicit terms it is made to depend solely upon the voluntary action of the taxing district and the language of this court as quoted below applies very directly to the present situation.

"What, then, is the nature of the right of the State here asserted, and how is it affected by this statute? Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the States. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the

States to yield a portion of their sovereign rights; that the burden of the appropriations falls unequally upon the several States; and that there is imposed upon the States an illegal and unconstitutional option either to yield to the Federal Government a part of their reserved rights, or lose their share of the moneys appropriated. But what burden is imposed upon the State. unequally or otherwise? Certainly there is none, unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the States where they reside. Nor does the statute require the States to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding.

"In the last analysis, the complaint of the plaintiff State is brought to the naked contention that Congress has usurped the reserved powers of the several States by the mere enactment of the statute, though nothing has been done and nothing is to be done without their consent; and it is plain that that question as it is thus presented is political, and not judicial, in character, and therefore is not a matter which admits of the exercise of the judicial power." (pp. 482, 483.)

Massachusetts v. Mellon, 262 U. S. 447 (67 L. Ed. 1078).

The same thought is expressed in the dissenting opinion delivered by Mr. Justice Cardozo in the case of Ashton v. Cameron County District, supra.

In the new act Congress has made it definite beyond all doubt that the proceeding must be purely voluntary, must be based upon the existence of legal capacity of the taxing agency to carry out the composition, and no order shall be rendered which will interfere with the State's control of its own governmental agencies.

"Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers including expenditures therefor."

USCA Title 11, Sec. 403 (i).

The Court shall not "interfere with (a) any of the political or governmental powers of the petitioner or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes or (c) any income-producing property unless the plan of composition so provides."

Ib. Sec. 403 (c).

#### POINT D

CONGRESS AFTER FULL HEARING, PASSED THE PRESENT ACT IN A SINCERE ATTEMPT TO REMEDY THE DEFECTS FOUND BY THE MAJORITY OF THE COURT IN THE FORMER ACT AND WE CONTEND THAT THE EFFORT WAS SUCCESSFUL AND THE NEW ACT VALID

Following the decision in Ashton v. Cameron County Water District, supra, full hearings were had before the sub-committee of the House and a number of different drafts of legislation for the relief of taxing districts were carefully considered and as a result the present act under consideration in this case was drawn and passed in a frank

attempt to cure the objections raised by a majority of the Court to the former act.

The previous act (U S C A Title 11, Sections 301-303, inclusive) was plainly directed to the "readjustment" of debts by "local governmental units," or "political subdivisions of any State."

Throughout the previous act the word "readjustment" or "plan of readjustment" are used, and it is evident that said act was based largely upon the analogy of the act providing for the reorganization of corporations. In the corporate reorganization act the word "reorganization" is used throughout. In the new act the simpler word "debt composition" is used throughout.

It is evident from the hearings upon H. R. 2505, 2506, 5403 and 5969 before the sub-committee of the House on March 1, 10, 17 of 1937, that this distinction was very carefully made. It was thought that the word "readjustment" or the word "reorganization" might imply that Congress was attempting to change in some manner the organization or powers of the taxing districts of the States. The intention was to emphasize the voluntary character of the new proceedings provided for in the present act.

"A composition is an agreement made upon a sufficient consideration, between an insolvent or embarrassed debtor and his creditors, whereby the latter for the sake of immediate payment, agree to accept a dividend less than the whole amount of their claims, to be distributed pro rata in discharge and satisfaction of the whole,"

By a composition, therefore, there is not involved any idea of a change in the organization or the functions of the debtor but simply a cash payment in full, to be distributed equally among all creditors of like class.

Another very important distinction emphasized in the hearings is that references to "political subdivisions" or "governmental agencies" are entirely eliminated and no mention is made in the new act of "counties" or "parishes," because the committee thought they were more nearly charged with governmental duties than the other kinds of taxing agencies. In the new act there is contained a specific declaration that its subject-matter is within the scope of the bankruptcy laws or, in other words, within "the subject of bankruptcies." The new act stresses in every possible way the voluntary nature of the proceeding, provides that the consent of a majority of not less than 51 percentum in value of the securities shall accept the plan in advance in writing and 66 2/3 percentum shall be required finally to establish the plan. Under the previous act held anconstitutional it was only required that creditors owning 30 percentum of the debts should express their consent at the time the petition was filed. The hearings show that this . distinction between the number of creditors assenting was inserted for the specific purpose of showing the court in advance that a majority of the creditors favored the composition.

The force of the language in the former act concerning "political subdivisions" was very fully discussed at the hearings and the committee apparently thought that the use of those words and of the words "governmental"

agency" were largely responsible for the conclusion of the majority in the Ashton case that there was an invasion of State sovereignty. All such language was carefully omitted from the present act; the powers of the States were reserved and excepted in the act and it was provided that the court must find that the particular taxing agency involved possessed legal anthority from the State to carry out the terms of the composition, without interfering with the State's control over its own agencies, financially and otherwise.

In fact the same program was followed by Congress in regard to the law now under consideration that was discussed by this court in the case of Wright v. Mountain Trust Co., 300 U. S. 440 (81 L. Ed. 737).

In that case hearings were had by Congress in an attempt to re-establish relief for insolvent farmers of a type somewhat similar to the original Frazier-Lemke Act which was held unconstitutional in the case of Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555 (79 L. Ed. 1593). In the Wright case, construing the new act, the court gave considerable weight to the intention of Congress as expressed in the hearings and debates and seems to have construed the new act somewhat liberally to uphold its constitutionality.

Congress has definitely expressed an intention to provide for relief to taxing agencies and when the first act was declared unconstitutional hearings were had and a new act has been drawn with the deliberate intention of curing the unconstitutional features which the majority held were inherent in the former act.

We earnestly contend that the new act should be upheld pursuant to the precedent of the Wright case.

#### POINT E.

THE ACT CONTAINS A BROAD CLAUSE SEEKING
TO MAKE IT EFFECTIVE IN ALL STATES AND
AS TO ALL TAXING AGENCIES TO WHICH IT
MAY CONSTITUTIONALLY APPLY, EVEN
THOUGH THE COURT SHOULD HOLD THAT IN
SOME STATES AND AS TO SOME AGENCIES IT
IS NOT VALID

We contend that the new act should be upheld as applicable to all taxing agencies whether they be political subdivisions or not. But if the court should adhere to the decision in the Ashton case and hold that some districts or agencies, cities or towns constitute arms of the State for governmental purposes, so that the act cannot apply to them; nevertheless, we urge that the court should limit its decision so as to save such agencies in other States or such other agencies as may be affected without violating the Constitution.

Up to date there are two decisions of District Courts on the act published in advance sheets of the Federal Supplement. Of these the case on appeal held the new act unconstitutional because of the precedent in the Ashton case, the court holding that a California irrigation district is "a State agency for purely governmental functions."

21 F. Supp. Adv. Sheets, published Jan. 3, 1938.

On the contrary the District Court for the Eastern District of Arkansas held that an Arkansas drainage district is not an arm of the State and does not exercise political or governmental functions but is an agency of taxpayers for specific limited duties and that the new act is constitutional and valid as applied to such an Arkansas district.

In ré: Drainage Dist. 7, Poinsett County, 21 F. Supp., published Feb. 28, 1938.

The opinion of District Judge Trimble so completely covers the situation with reference to Arkansas districts that no comment upon it is required and furthermore it points out some of the distinctions between the act discussed in the Ashton case and the present act and the effect of the congressional hearings upon the interpretation of the new act. The saving clause wherein Congress undertook to provide that the act might apply to some States or taxing agencies, even though not applicable to other States or taxing agencies, was discussed and he cited to the effect that such a saving clause is a valuable aid to interpretation of the case of Dorchy v. Kansas, 264 U. S. 286 (68 L. Ed. 686).

#### POINT F

# THE ACT UNDOUBTEDLY IS UNIFORM AND IS AN ACT WITHIN THE SUBJECT OF BANKRUPTCIES

We do not need to multiply authorities upon this question because even the majority opinion in the Ashton case, supra, seems to hold that the original act is an act upon the subject of bankruptcy and that it is uniform and the dissenting opinion of Mr. Justice Cardozo clearly points out the authorities which show that the act is uniform to all such agencies as have the requisite capacity under the law

of the place of their creation and that it is an act on the subject of bankruptcies.

Continental III. Bank v. C., R. I. & P. R. R. Co., 294 U. S. 648 (79 L. Ed. 1110).

Hanover National Bank v. Moyses, 186 U. S. 181 (46 L. Ed. 1113).

IN CONCLUSION we respectfully urge that the debt composition act be held constitutional, or if the court should determine it not to be applicable to the appellant, at least it should be upheld as to any State or any taxing agency that under the law of a particular State may come within its terms.

Respectfully submitted,

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Attorney for Drainage Districts.

A copy of this brief has been served upon opposing counsel.

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In the Supreme Cours

AORE OROPLE

OF THE

Anited States

OCTOBER TERM, 1937

No. 772

LINDSAY-STRATHMORE IRRIGATION DIS-TRICT,

Appellant,

MILO W. BEKINS and REED J. BEKINS. as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

BRIEF OF THE STATES OF CALIFORNIA, MISSIS-SIPPI, MISSOURI, NEVADA, NEW MEXICO, ORE-GON AND WYOMING AS AMICI CURLE IN SUP-PORT OF APPELLANT.

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Attorney General.

State of Mississippi;

RAY MCKITTRICK, Attorney General, State of Missouri; Attorney General, State of Oregon;

GRAY MASHBURN, Attorney General, State of Nevada; FRANK H. PATTON, Attorney General,

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Attorney General, State of Wyoming;

As Amici Curiæ.

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# In the Supreme Court

OF THE

### United States

OCTOBER TERM, 1937

No. 772

LINDSAY-STRATHMORE IRRIGATION DISTRICT,

Appellant,

VS.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al.,

Appellees.

BRIEF OF THE STATES OF CALIFORNIA, MISSIS-SIPPI, MISSOURI, NEVADA, NEW MEXICO, ORE-GON AND WYOMING AS AMICI CURLÆ IN SUP-PORT OF APPELLANT.

#### INTRODUCTORY STATEMENT.

The States of California, Mississippi, Missouri, Nevada, New Mexico, Oregon and Wyoming are vitally interested in the outcome of the above-entitled cause

and their undersigned legal representatives, by leave of the Court, present this brief as amici curia and urge that the judgment of the District Court of the Southern District of California, holding Chapter X of the National Bankruptcy Act unconstitutional, should be reversed.

The learned District Judge in his opinion frankly declared his personal view to be that the statute was a valid exercise of the bankruptcy power, but he concluded that he was bound under the decision of this Court in

Ashton v. Cameron\_County Water Improvement District No. 1, 298 U. S. 513,

in which Chapter IX of the Bankruptcy Act was held to be an invasion of the reserved rights of the States, to make the same ruling with respect to Chapter X. We respectfully submit that the decision of the District Court is erroneous for at least three cogent reasons:

First, Chapter X was carefully framed to meet the objections of this Court to Chapter IX;

Second, The analogy between the implied limitation on the Federal taxing power and the bank-ruptcy power, which was the basis of the decision in the Ashton case, does not, under recent decisions of this Court, support the conclusion in that case;

Third, Chapter X is essentially different from Chapter IX and does not in any way endanger or affront any sovereign rights of the States.

#### INTEREST OF AMICI CURIÆ.

The States we represent contain numerous taxing agencies that are burdened with indebtedness which they have been unable to meet, and which most of them

never can meet because of the excessive amount of the original indebtedness or because of the accumulation of unpaid interest and matured principal resulting from the inability of the landowners during the depression to raise money for the taxes levied for such obli-These agencies are not seeking to repudiate their indebtedness. They have made heroic efforts to perform the impossible until it has been demonstrated over and over again that efforts to compel the payment of taxes in excess of the productive possibilities of the land result in rapidly diminishing returns and the ultimate collapse of the machinery of taxation. nearly every such case plans of composition of the outstanding indebtedness have been agreed to by large majorities of the creditors, who are as anxious as the taxing agencies themselves to effect the consummation of these plans, but in nearly every such case there is a small minority of militant creditors who have refused to accept anything less than the full amount legally due them, although they well know that it is impossible for all creditors to be paid on that basis.

Act, approved August 16, 1937, to assure equitable treatment for all the creditors of such taxing agencies by the confirmation of their plans of composition in open court after full hearing and thus bind all of the creditors to accept what the holders of at least two-thirds of the outstanding obligations have determined is the most that can be obtained. Chapter X provides that such a plan cannot be confirmed by the court until it has been accepted by or on behalf of such a majority of creditors and until the court finds that the plan is fair, equitable and for the best interests of the creditors, and does not discriminate unfairly in favor of any creditor or class of creditors, and has been offered

and accepted in good faith, and that the petitioner is authorized by law to take all action necessary to be

taken by it to carry out the plan.

As the legal representatives of sovereign States, we have been unable to discover in this statute any violation of the reserved rights of the States or any provision that would subject our taxing agencies to the will of Congress or interfere with their free deter-

mination of their fiscal policies.

We assume, as this Court stated with reference to Chapter IX, that Chapter X is "adequately related to the subject of bankruptcies", and, as we believe this carefully limited extension of the privileges of the bankruptcy courts to public agencies will be of immense benefit to our respective States by making possible the orderly and equitable solution of otherwise baffling financial problems and that the new statute has been drawn with meticulous pains to avoid any interference with the sovereign rights of the States, we respectfully urge that it be upheld and that the judgment of the District Court be reversed.

#### I.

CHAPTER X HAS BEEN CAREFULLY FRAMED TO MEET THE OBJECTIONS OF THIS COURT TO CHAPTER IX.

The purposes to be accomplished by Chapter X of the Bankruptcy Act are essentially the same as were sought to be accomplished by Chapter IX, but the report of the hearings on the measure before the Subcommittee of the Judiciary Committee of the House of Representatives, which considered two bills to meet the decision holding Chapter IX unconstitutional, shows that Chapter X was prepared with great care to meet the objections set forth in the majority opinion in the Ashton case, particularly that the respondent in that

case was a political subdivision of the State created for the local exercise of sovereign powers and that its fiscal affairs were those of the State, "not subject to control or interference by the National Government, unless the right so to do is definitely accorded by the Federal Constitution", and the further objections that the application of the provisions of Chapter IX "might materially restrict respondent's control over its fiscal affairs", that if the obligations of States or their political subdivisions might be subject to the interference attempted in Chapter IX, they were "no longer free to manage their own affairs" and "the will of Congress prevails over them", and that if that act were sustained, the Federal Government, acting under the bankruptcy clause, might "impose its will and impair state powers—pass laws inconsistent with the idea of sovereignty".

While it was not specifically pointed out in the decision in the Ashton case how these results would follow from the provisions of Chapter IX, the report of the Judiciary Committee to the House of Representatives shows clearly the purpose of Congress to preserve the rights of the States in the new enactment. After stating that the committee believed the new measure would be welcomed by debtors and creditors alike, the report declared:

"The bill here recommended for passage expressly avoids any restriction on the power of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable, and no control or jurisdiction over that property and those

revenues of a petitioning agency necessary for essential governmental purposes is conferred by the bill."

Under such circumstances the strong presumption that the constitutional objections to the former enactment have been avoided in the enactment of a measure expressly designed to meet them, was declared by this Court in

Wright v. Vinton Branch of the Mountain Bank, 300 U. S. 440.

#### II.

THE ANALOGY BETWEEN THE IMPLIED LIMITATION ON THE FEDERAL TAXING POWER AND THE BANKRUPTCY POWER, WHICH WAS THE BASIS OF THE DECISION IN THE ASHTON CASE, DOES NOT, UNDER RECENT DECISIONS OF THIS COURT, SUPPORT THE CONCLUSION IN THAT CASE.

The decision of the majority of the Court in the Ashton case appears to have been based rather upon the fear of the consequences of possible extensions of the bankruptcy power if its application to the affairs of public taxing agencies were allowed than of the consequences of the specific provisions of that statute, and it was held that the same implied limitation upon the taxing power of the Federal Government which this Court had long recognized, should be applied to the bankruptcy power. This Court, however, in

Helvering v. Mountain Producers Corporation, decided March 7, 1938,

has clearly defined the scope of the implied limitation upon the Federal taxing power, and we respectfully submit that, by analogy of the rule established in that decision, the bankruptcy power may be properly exercised as set forth in Chapter X, because there is in truth

no "direct and substantial interference" with any of the functions of the State agencies authorized to take advantage of its provisions and there is "only remote, if any, influence upon the exercise of the functions" of these taxing agencies.

In the case just cited two decisions of this Court were expressly overruled on the ground that later distinctions had "attenuated their teachings" and that they were out of harmony with other decisions of the Court. In summing up this Court's conclusions from the decisions reviewed, it was said:

"These decisions in a variety of applications enforce what we deem to be the controlling view—that immunity from nondiscriminatory taxation sought by a private person for his property or gains because he is engaged in operations under a government contract or lease cannot be supported by merely theoretical conceptions of interference with the functions of government. Regard must be had to substance and direct effects."

This is in harmony with decisions of this Court regarding alleged interference by the States with interstate commerce. Thus in

American Mfg. Co. v. City of St. Louis, 250 U.S. 459,

it was held that an excise tax levied by a State on articles carried in interstate commerce which has only a remote effect on such commerce is valid. The principle governing the implicate limitation on the Federal taxing power, quoted above, is in direct line with the following statement of this Court in

Hump Hairpin Co. v. Emmerson, 258 U.S. 290, 294:

"The turning point of these decisions is, whether in its incidence the tax affects interstate commerce so directly and immediately as to amount to a genuine and substantial regulation of, or restraint upon it, or whether it affects it only incidentally or remotely so that the tax is not in reality a burden, although in form it may touch and in fact distantly affect it."

The bankruptcy power, like the taxing power, is conferred upon Congress in the broadest possible terms. Any implied limitation upon it must therefore be construed with the utmost strictness and limited to preventing actual invasions of the reserved rights of the To paraphrase the language of this Court in the foregoing quotations, the Congressional authorization to specifically defined State agencies to apply to the bankruptcy court to confirm their agreements with creditors, for the sole purpose of making them binding upon all creditors, must not be frustrated on account of "merely theoretical conceptions of interference with the functions" of such agencies, but "regard must be had to substance and direct effects", and before such a statute should be held unconstitutional, it must appear that there is "a genuine and substantial" restraint upon the exercise of some reserved right of the States.

This view disposes of the suggestion that if the right of Congress to authorize voluntary applications to the bankruptcy court by taxing agencies is upheld, Congress may then authorize involuntary proceedings against such taxing agencies or even extend the power of the bankruptcy court to the States themselves. This ignores the potency of the implied limitation upon the bankruptcy power to protect the States and their taxing agencies from any actual invasion of their rights or any attempt on the part of Congress to impose its will in restraint of the exercise of such rights.

Ever since the decisions of this Court in The Passanger Cases, 7 How. 283, and Washington University v. Rouse, 8 Wall. 439,

it has been recognized that the consideration of constitutional questions as to the power of Congress is not foreclosed by former decisions, and, insofar as the decision in the *Ashton* case is out of harmony with other, and especially with later, decisions of this Court regarding implied limitations on express Constitutional grants of legislative power, there should be no hesitancy in declaring that it is not to be regarded as authority.

III.

CHAPTER X IS ESSENTIALLY DIFFERENT FROM CHAPTER IX AND DOES NOT IN ANY WAY ENDANGER OR AFFRONT ANY SOVEREIGN RIGHT OF THE STATES.

While the purposes to be accomplished under Chapter X are essentially the same as were sought to be accomplished under Chapter IX, a comparison of the two chapters confirms the above-quoted statement of the House Judiciary Committee that the new measure avoids any restrictions on the power of the States or their arms of government in the exercise of their sovereign rights and duties.

1. Chapter X makes it clear that the jurisdiction of the Court is limited to the confirmation of plans of composition, which, as was pointed out in

Nassau Smelting & Refining Works, Ltd., v. Brightwood Bronze Foundry Company, 265 U.S. 269,

are in all respects voluntary proceedings between debtors and creditors, leaving to the court only the power to enforce upon dissenting creditors the will of the majority. Chapter IX provided for the confirmation of plans of "readjustment". Its structure was analogous to the provisions of Section 77 of the Bankruptcy Act providing for the reorganization of railroads and Section 77b providing for corporate reorganizations generally, in which the powers of the court were exercised on both debtors and creditors. Furthermore, Subsection (i) of Section 80 in Chapter IX contained the following provision:

"In proceedings under this chapter and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the taxing district and the rights and liabilities of creditors, and of all persons with respect to the taxing district and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the petition of the taxing district was approved."

This drastic language implied distinctly the subjection of the taxing district and its property to the power of the bankruptcy court. No such provision is found in Chapter X.

2. In Subdivision (3) of Subsection (c) of Section 80 in Chapter IX it was provided that the judge "shall require the taxing district at such time or times as the judge may direct, and in lieu of the schedules required by Section 7 of this Act, to file such schedules and submit such other information as may be necessary to disclose the conduct of the affairs of the taxing district and the fairness of any proposed plan", and it was further provided in Subdivision (7) of said Subsection (c) that the judge "may require the taxing district to open its books, records, and files to the inspection of

any creditor of the taxing district during reasonable business hours". No such provisions are contained in Chapter X.

If it be suggested that these provisions are essential to the protection of the rights of creditors, the answer is that, as these taxing districts are public agencies, their records, to such extent as the respective States may deem proper, are open to public inspection. To give the bankruptcy court inquisitorial powers over such districts might reasonably be considered an affront to State sovereignty. Of course, unless the petitioning district frankly presents at the hearing the facts regarding its financial condition, it cannot show that its plan of composition is fair and equitable, but the theory of Chapter X is that these state agencies should be left free to manage their own affairs and present their cases to the court on their merits without being subjected to any compulsion by the court itself.

- 3. In Subdivision (11) of said Subsection (c) of Section 80 it was provided that the court should not by any order or decree interfere with any of the property or revenues of the taxing district necessary "in the opinion of the judge" for essential governmental purposes. This quoted language has been eliminated from the corresponding provision in Chapter X.
- 4. In Subsection (e) of Section 80 it was provided that before a plan was confirmed changes and modifications might be made therein "with the approval of the judge after hearing upon notice to creditors", subject to the right of any creditor who had previously accepted the plan to withdraw his acceptance. In Chapter X it is expressly provided in Subdivision (c) of Section 83 that any changes or modifications of the

plan of composition must be subject to their acceptance in writing by the petitioner.

5. In Subsection (f) of Section 80 in Chapter IX it was provided that upon confirmation of a plan "the provisions of the plan and of the order of confirmation shall be binding upon (1) the taxing district, and (2) all creditors, secured or unsecured" etc. Under this provision drastic orders might be made imposing the will of the court in various details upon the taxing district. In Subdivision (f) of Section 83 it is provided that if an interlocutory decree confirming the plan is entered, the plan and the decree shall become and be binding upon all creditors affected by the plan "if within the time prescribed by the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors". This confirms the purely voluntary nature of the proceeding authorized by Chapter X. Of course, the district is bound by its agreement with the creditors who have accepted the plan, but it is bound under its general authority from the State to make contracts, and not by virtue of the decree of the bankruptcy court, and it is only when the consideration for the composition has been posted by the debtor that the decree itself becomes binding upon the dissenting creditors.

We respectfully submit that these distinctions are of substance and not merely of form and that they meet the objections of the majority of the Court to Chapter IX as effectively as the enactment of the second FrazierLemke Act met the objections to the first. Accordingly, we contend that the learned judge of the District Court was in error in holding that there was no essential difference between the provisions of Chapter IX and the provisions of Chapter X, and therefore, as well as for the other reasons heretofore stated, the judgment should be reversed and that the petition of Lindsay-Strathmore Irrigation District for confirmation of its plan of composition should be heard on its merits by the District Court.

Dated April 1, 1938.

Respectfully submitted,

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RAY E. LEE,
Attorney General, State of Wyoming,
As Amici Curia.

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## In the Supreme Court

OF THE

United States

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MAY 18 1938

CHARLES ELMORE CROPLE OLERK

OCTOBER TERM, 1937

THE UNITED STATES OF AMERICA,

Appellant,

V8.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al., etc.,

Appellees.

No. 757

LINDSAY-STRATHMORE IRRIGATION DISTRICT,
Appellant,

VA.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al., etc., Appellees. No. 772

APPELLEES' PETITION FOR A REHEARING.

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# In the Supreme Court of the United States

OCTOBER TERM, 1937

THE UNITED STATES OF AMERICA,

Appellant,

V8.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al., etc.,

Appellees.

No. 757

LINDSAY-STRATHMORE IRRIGATION DISTRICT,
Appellant,

VS.

MILO W. BEKINS and REED J. BEKINS, as Trustees Appointed by the Will of Martin Bekins, Deceased, et al., etc.,

Appellees.

No. 772

#### APPELLEES' PETITION FOR A REHEARING.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Come now Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, de-

ceased, Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Katherine Bekins, deceased, J. R. Mason, James Irvine, A. Heber Winder as trustee for Eva A. Parrington Trust, C. A. Moss and James H. Jordan, appellees, and present this, their petition for a rehearing of the above-entitled cause, and in support thereof respectfully show:

#### POINT I. THE STATE HAS NOT CONSENTED.

The Court states:

"\* \* \* the state has given its consent."

In the brief and at the oral argument it was suggested by appellees that the title to the state act was not sufficiently comprehensive to embrace Chaper X. This was based upon Article IV, Section 24 of the California Constitution, which provides:

"Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title " \* ""

The more serious question, as to the state act, however, upon further consideration, lies in the fact that, if it be construed the Legislature intended the act to apply to future acts of Congress, the same would be void as an unlawful delegation of legislative authority.

Cal. Const., Art. IV, Sec. 1.

A similar situation arose under the Eighteenth Amendment. The State of California had enacted the so-called Wright Act adopting certain provisions of the Volstead Act, and the act was challenged on the ground that the Wright Act "purports to adopt also the future provisions which may be hereafter enacted by Congress", and the Supreme Court said, in relation to such provision,

"It may be conceded that this provision is not valid, although we do not decide it, since it is not involved".

Ex parte Burke, 190 Cal. 326, 328. Approved in Brock v. Superior Court, 94 Cal. Dec. 135.

## POINT II. THE PURPORTED CONSENT OF THE STATE IS AN UNLAWFUL DELEGATION OF JUDICIAL POWER.

Article VI, Section 1 of the California Constitution provides that the judicial power of the state shall be vested in certain courts.

If it be deemed that the consent of the state is effective, it would seem that it is effective for only one purpose, and that is to confer jurisdiction upon a federal bankruptcy court.

It seems to be conceded by the opinion in this case that without the consent of the state the bankruptcy power of Congress would be incomplete.

The state has no power to confer such authority upon its own courts or in any manner to effect the result here sought.

The consent of the state, therefore, seems to amount to an attempt to confer jurisdiction upon a federal court.

> Ex Parte Knowles, 5 Cal. 300; Duffy v. Hobson, 40 Cal. 240; Van Camp Sea Food Co., Inc. v. State Fish and Game Commission, 75 Cal. App. 764.

#### POINT IIL STATE CONSENT DOES NOT ENLARGE THE POWER OF CONGRESS.

This Court said in the case of

In re Rahrer, 140 U.S. 545, 560:

"It does not admit of argument that Congress can neither delegate its powers nor enlarge those of a State."

The converse must likewise be true.

See

U. S. v. Constantine, 56 Sup. Ct. 223, 296 U. S. 287.

If it is the intention of the Court to overrule the principle laid down in this case and in the case of

Pollard v. Hagan, 3 How. 212,

it would appear that the opinion ought to be clarified to that extent. In the latter case the Court said in part, speaking of an agreement between Alabama and the Federal Government:

"And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty, and eminent domain to the United States, such stipulation would have been void and inoperative; because, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted " ""

And the Court used this very pertinent language of the act of Congress requiring Alabama's disclaimer:

"Every constitutional act of Congress is passed by the will of the people of the United States, expressed through their representatives, on the subject matter of enactment; and when so passed it becomes the supreme law of the land, and operates by its own force on the subject matter, in whatever State or territory it may happen to be. The proposition, therefore, that such a law cannot operate upon the subject matter of its enactment, without the express consent of the people of the new State where it may happen to be, contains its own refutation, and requires no farther examination."

Dealing also with the subject of compacts, this Court said:

"Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and no compact that might be made between her and the United States could diminish or enlarge these rights."

## POINT IV. GENERAL SOVEREIGNTY MUST YIELD TO CONSTITUTIONAL PROHIBITION.

It is stated in the opinion:

"It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental powers."

Generally this is no doubt true, but by Article I, Section 10 of the Federal Constitution it is provided:

"No state shall " " pass any " " law impairing the Obligation of Contracts " ""

and by Article I, Section 16 of the California Constitution it is provided:

"No \* \* law impairing the obligation of contracts, shall ever be passed."

Any necessary consent in this case would seem to do violence to these constitutional inhibitions.

## POINT V. THE CONTRACT CLAUSE MUST BE CONSIDERED IN CONNECTION WITH ANY CONSENT OF THE STATE.

The opinion then states:

"The reservation to the States by the Tenth Amendment protected, and did not destroy, their right to make contracts and give consents where that action would not contravene the provisions of the Federal Constitution."

Since the consent of the state, if at all necessary to the exercise of the power, would seem to be a clear violation of the contract clause, such consent would appear to be prohibited.

## POINT VI. THE STATE MAY MAKE SUCH CONTRACTS AS IT WILL, BUT WHEN MADE THEY MUST BE RESPECTED.

It is stated in the opinion:

"The State is free to make contracts with individuals and give consents upon which the other contracting party may rely with respect to a particular use of government authority."

This is conceded in a general sense. But it is respectfully suggested that after such a contract is made by the state, it has not the power to change, modify,

repudiate, or destroy that contract without the consent. of the other contracting parties. In other words, it is without power to impair the obligations of the contract which it has made.1

Under the contract clause it will be noted that no state shall pass "any" law impairing the obligation of contracts. The word "any" seems to be all comprehensive. Whether the law be one of direct repudiation, one repealing a grant as was done in the Georgia case, or simply a necessary consent, it seems to come within the prohibition.2

<sup>1.</sup> In support of the Court's statement above quoted under this point, the great decision of this Court in Fletcher v. Peok, 6 Cranch 87, 137, is cited. It will be noted that Mr. Chief Justice Marahall in that case held an act of the Legislature of Georgis void, where the Legislature attempted to rescind a grant theretofore made by the state. The act was held void, because it impaired the obligation of contract.

The Chief Justice in that case pointed out with peculiar force the reason for the contract clause, and said:

"Whatever respect might have been felt for the states' sovereignties, it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of

it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of the stealing of the moment; and the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the Legislative power of the states are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed the bill of rights for the people of each state."

<sup>2.</sup> Mr. Chief Justice Hughes said, speaking for the Court in the case of Home Building & Loan Assa. v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231:

"But the reasons which led to the adoption of that clause, and of the other prohibitions of section 10 of article I, are not left in doubt, and have frequently been described with eloquent emphasis. The wide-spread distress following the revolutionary period and the plight of debtors had called forth in the States an ignoble array of legislative schemes for the defeat of creditors and the invasion of contractual obligations. \* \* It was necessary to interpose the restraining power of a central authority in order to secure the foundations even of 'private faith'. The occasion and general purpose of the contract clause are summed up in the terse statement of Chief Justice Marshall in Ogden v. Saunders, 12 Wheat. 213, 354, 355, 6 L. Ed. 606: The power of changing the relative situation of debtor and creditor, of interfering with contracts, a power which comes home to every man, touches the interest of all, and controls the conduct of every individual in those things which he supposes to be proper for his own exclusive management, had been used to such an excess by the state legislatures, as to

POINT VII. THE MAKING OF COMPACTS BETWEEN STATES WITH CONSENT OF CONGRESS IS EXPRESSLY AUTHORIZED.

The opinion states:

"The states with the consent of Congress may enter into compacts with each other and the provisions of such compacts may limit the agreeing States in the exercise of their respective powers."

The power to make compacts, with the consent of Congress, is expressly authorized by Article I, Section 10, Clause 3 of the Federal Constitution.

POINT VIII. THE CONSTITUTIONAL PROHIBITION WITH-DRAWS THE CASE PROM THE ANALOGY OF INTERNA-TIONAL LAW.

In the opinion, after stating that it is of the essence of sovereignty to be able to make contracts and give

break in upon the ordinary intercourse of society, and destroy all confidence between man and man."

The Court discusses the history of the contract clause and cites the decision of Es Parte Milliam, 4 Wall. 2, 120, 121, quoting:

"No doctrine involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism. " ""

The Court says further:

"" " as there must always follow from such a course, a long trail
of ills; one of the direct consequences being a loss of confidence in the
government and in the good faith of the people " " This state of
things alarmed all thoughtful men, and led them to seek some effective remedy."

The Federalist, by Madison, No. 44, is quoted as saying:

"One legislative interference is but the first link of a long chain
of repetitions, every subsequent interference being naturally produced by
the effects of the preceding."

And the Court concludes:

"" " the foregoing leaves no reasonable ground upon which to
base a denial that the clause of the Constitution now under consideration was meant to foreclose state action impairing the obligation
of contracts primarily and especially in respect of such action aimed
at giving relief to debtors in time of emergency."

consents bearing upon the exertion of governmental power, the Court said:

"This is constantly illustrated in treaties and conventions in the international field by which governments yield their freedom of action in particular matters in order to gain the benefits which accrue from international accord."

It is respectfully suggested that we find nothing in international law placing a prohibition upon a sovereign analogous to the contract clause of the Constitution.

#### POINT IX. THE STATE CANNOT CONSENT TO BE TAXED.

The Court points out in the opinion that instrumentalities of the national government, while immune from taxation by states, may be so taxed if the national government consents, and then states:

"and by a parity of reasoning the consent of the State could remove the obstacle to the taxation by the federal government of state agencies to which the consent applied."

The Federal Constitution is one of delegated powers. It has been held that the power to tax is the power to destroy, and that if the state as an independent sovereign within its field could tax the instrumentalities of the Federal Government, then the state would have it within its power to seriously hinder the exercise of the great powers delegated to the United States, but there seems to be nothing in the Constitution to prevent Congress, if it saw fit, from waiving such immunity in a particular case.

Now when we turn to the state constitution we find that they are limitations on power. The ultimate sovereignty, of course, rests in the people. The Legislatures of the several states may exercise that full sovereign power except as the legislative right is limited by the people in their constitution. Now in California we find that by Article IV, Section 31 of the Constitution the Legislature is denied the right to give or to lend or to authorize the giving or the lending of the credit of the state, or of any county, etc.3

tions and liabilities as are imposed by law upon all other stockholders in such corporation; and

Provided further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during time of war, in the sequisition of, or payments for, farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans.

The California Veterans' Welfare Bond Act of 1921 (Statutes of 1921, Chapter 578), as enacted at the forty-fourth session of the Legislature of the State of California, authorizing the issuance and sale of State bonds in the sum of ten million dollars, for the purpose of creating a fund to carry out the provisions of the California Veterans' Welfare Act, providing land settlement for veterans (Statutes of 1921, Chapter 580), and the provisions of the "Veterans' Farm and Home Purchase Act", providing farm and home aid for veterans (Statutes of 1921, Chapter 519) is hereby approved, adopted, legalized, validated and made fully and completely

<sup>3.</sup> Article IV, Section 31.

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the States, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section 22 of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation 3. Article IV, Section 31. a stockholder in any corporation whatever; provided, further, that irrigation a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorised by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in tions and liabilities as are imposed by law upon all other stockholders in

We presume that other states have somewhat similar provisions in their constitution. Now since the state instrumentalities are not taxable by the Federal Government as a matter of right, it may be seriously doubted that the Legislature could by any act authorize such taxation. Since such taxation would not be as a matter of right but as a matter of grace, it would be in the nature of a gift or a contribution. If that is the case, then such a gift or contribution is clearly prohibited to the Legislature of California. Of course the people could amend their constitution and make such a gift, but even then it would seriously be doubted that it could be construed as anything other than a contribution or a gift rather than taxes.

effective irrespective of the vote that may be east upon the proposition of approving or disapproving such Veterans' Welfare Bond Act of 1921 at the

effective irrespective of the vote that may be cast upon the proposition of approving or disapproving such Veterans' Welfare Bond Act of 1921 at the general election of November 7, 1922. All provisions of this section shall be self-executing and shall not require any legislative action in furtherance thereof, but this shall not prevent such legislative action.

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and it shall be his duty to make such temporary transfers from the funds in his custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in his custody and are paid out solely through his office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed eighty-five per cent of the taxes accruing to such political subdivision, shall not be made prior to the first day of the fiscal year, nor after the last Monday in April of the current fiscal-year, and shall be replaced from the taxes accruing to such political subdivision before any other obligation of such political subdivision is met from such taxes.

And provided, further, that the city of Glendale, of Los Angeles county, may, when authorized so to do, by a majority of the voters thereof voting at an election held for that purpose, pty from the surplus of the public service department of said city the amount of any assessment or assessments levied by said city between the eleventh day of May, 1921, and the person or persons owning the property so a

#### POINT X. STATE FISCAL POWERS ARE IMPAIRED.

It is stated in the decision:

"We are thus brought to the inquiry whether the exercise of the federal bankruptcy power in dealing with the composition of the debts of the irrigation district, " " must be deemed to be an unconstitutional interference with the essential independence of the State " "

"In Ashton v. Cameron County District, supra, the court considered that the provisions of Chapter IX \* \* " might materially restrict its control over its fiscal affairs' \* \* \*

"In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection \* \* \*"

Notwithstanding that the act here in question authorizes the forcible changing of the bond contract as to those not consenting, there seems to be a clear inference, if not an actual statement, in the decision, that such forcible changing is not a material restriction upon the state over its fiscal affairs. The effect upon the states' power to borrow money, it is thought, can hardly be doubted. The true rule, in such case, seems well stated by this Court, through Mr. Chief Justice Hughes, in James v. Dravo Contracting Co., decided at this term (Dec. 6, 1937) as follows:

"That doctrine recognizes the direct effect of a tax which 'would operate on the power to borrow before it is exercised' (Pollock v. Farmers' Loan & Trust Co., supra), and which would directly affect the government's obligation as a continuing security. Vital considerations are there involved respecting the permanent relations of the government to investors in its securities and its ability to maintain its credit; \* \* \*"

#### POINT XL THE DECISION DOES NOT SEEM CLEAR.

Under this heading it is with deference that we point, to what appears to be a serious uncertainty in the Court's opinion.

It seems rather clear that the decision is based largely upon the proposition that the state may consent to being bound by a bankruptcy statute, or that the state may cooperate with the Federal Government in bringing about a composition of its debts, and yet the Court states:

"It is immaterial, if the consent of the State is not required to make the federal plan effective, and it is equally immaterial if the consent of the State has been given \* \* \*"

If the consent of the state is immaterial, then it would seem that the bankruptcy power in Congress is plenary and may be exercised over the state and its agencies in any way that the Congress may determine, whether voluntary or involuntary or whether applied to this agent or the state itself. If that power over the state is supreme, then it would seem to follow that the power of the state to make contracts, to give consent, to make compacts, and to waive its immunity from taxes, becomes unimportant.

### POINT XII. THE ASHTON DECISION IS NEITHER OVERRULED NOR DISTINGUISHED.

The Ashton case (Ashton v. Cameron County Water Improvement District No. 1, 298 U. S. 513) is not overruled, either directly or by inference. It does not even seem to be distinguished. After quoting briefly from the Ashton decision, the Court said:

"In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection."

Which in effect would seem to reaffirm the Ashton decision.

The Court in the Ashton case held that Chapter IX was sufficiently related to the subject of bankruptcy. In this case the Court said:

"\* \* it is well settled that a proceeding for composition is in its nature within the federal bankruptcy power."

So it seems perfectly clear that both in this case and in the Ashton case the Court was dealing with an act upon the subject of bankruptcy, both applied to a state agency. Furthermore, the same form of agency was involved in the Ashton case as is involved here.

The words quoted from the Ashton decision, as follows: "might materially restrict its control over its fiscal affairs", as indicated by the context, seems to show no different condition than is found in this case. The whole paragraph in which that quotation is found, is as follows:

"The power 'To establish \* \* \* uniform Laws on the subject of Bankruptcies' can have no higher rank or importance in our scheme of government than the power 'to lay and collect taxes'. Both are granted by the same section of the Constitution, and we find no reason for saying that one is impliedly limited by the necessity of preserving independence of the states, while the other is not. Accordingly, as application of the statutory provisions now before us might materially restrict respondent's control over its fiscal affairs, the trial court rightly declared them invalid." (Italics ours.)

The above paragraph is immediately followed by the very clear reasons for the statements therein contained, as follows:

"If federal bankruptcy laws can be extended to respondent, why not to the state? If voluntary proceedings may be permitted, so may involuntary ones, subject, of course, to any inhibition of the Eleventh Amendment. Re Quarles, 158 U.S. 532, 535, 39 L. Ed. 1080, 1081, 15 S. Ct. 959. If the State were proceeding under a statute like the present one, with terms broad enough to include her, apparently the problem would not be materially different. Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted. And it is of the first importance that due attention be given to the results which might be brought about by the exercise of such a power in the future."

The Court in this case, further referring to the Ashton case, said:

"" \* " if obligations of States or their political subdivisions might be subjected to the interference

contemplated by Chapter IX, they would no longer be 'free to manage their own affairs'."

The above quotation, "free to manage their own affairs", from the Ashton decision is immediately explained in the Ashton decision by the following words:

"\* \* the will of Congress prevails over them; although inhibited, the right to tax might be less sinister. And really the sovereignty of the state, so often declared necessary to the federal system, does not exist."

We refer at some little length to the Ashton case, not by way of argument, but to respectfully indicate that if this decision is to stand, then we will have two solemn declarations of this Court upon the same general subject, dealing with the same kind of an agency, both under the bankruptcy power, with no change in the act involved, except in phraseology, one denying the power, and the other holding the power to exist.

## POINT XIII. THE COURT LEAVES UNDECIDED THE QUESTION OF THE VACATING OF THE INJUNCTION.

It will be remembered that the order of the trial Court vacating its injunction against the prosecution of the petition for writ of mandate issued by the State Court requiring the supervisors of Tulare County to take certain action was drawn into question. (R. 19, 25, 89, 92, 102.)

In appellees' brief (p. 45, 53) it is suggested that when the alternative writ of mandate was obtained,

directed to the Board of Supervisors by appellees, the appellees had obtained vested rights and that any interference by the Court would not only be an interference with the political power of the State, but with vested rights of appellees. The opinion seems to be silent upon this important point.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted and that the judgment of the District Court, Southern District of California, Northern Division, be, upon further consideration, affirmed.

Dated, Turlock, California, May 12, 1938.

Respectfully submitted,
W. COBURN COOK,
CHARLES L. CHILDERS,
Counsel for Appellees
and Petitioners.

#### CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellees and petitioners in the above entitled causes and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, Turlock, California, May 12, 1938.

W. COBURN COOK,

Of Counsel for Appellees
and Petitioners.

#### SUPREME COURT OF THE UNITED STATES.

Nos. 757, 772.—Остовев Текм, 1937.

The United States of America, Appellant,

757 vs

Milo W. Bekins and Reed J. Bekins, as trustees, appointed by the will of Martin Bekins, deceased, et al., etc.

Lindsay-Strathmore Irrigation District, Appellant,

772 vs.

Milo W. Bekins and Reed J. Bekins, as trustees, appointed by the will of Martin Bekins, deceased, et al., etc. Appeals from the District Court of the United States for the Southern District of California.

[April 25, 1938.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

These are direct appeals from the judgment of the District Court for the Southern District of California under the Act of August 24, 1937, c. 754, 50 Stat. 751. They present the question of the constitutional validity of the Act of August 16, 1937, 50 Stat. 653, amending the Bankruptcy Act by adding Chapter X providing for the composition of indebtedness of the taxing agencies or instrumentalities therein described. A certificate was issued to the Attorney General and the United States intervened. The District Court held the statute invalid as applied to the appellant and dismissed its petition for composition. The court considered itself bound by the decision in Ashton v. Cameron County District, 298 U. S. 513.

Appellant, the Lindsay-Strathmore Irrigation District was organized in the year 1915 under the California Irrigation District Act of March 31, 1897 (Cal. Stat. 1897, p. 254). It comprises about 15,260 acres in Tulare County. It is an irrigation district and taxing agency created for the purpose of constructing and

operating irrigation projects and works devoted to the improvement of lands for agricultural purposes. On September 21, 1937, it presented its petition for the confirmation of a plan of composition. The petition alleged insolvency; that its indebtedness consisted of outstanding bonds aggregating \$1,427,000 in principal, with unpaid interest of \$439,085.15; that no interest or principal falling due since July 1, 1933, had been paid; that the low price of agricultural products had prevented the owners of land within the irrigation district from meeting their assessments: that upon the assessment levied by the District in the year 1932 there was a delinquency of 47 per cent. and that since that year there had been levied only an assessment of sufficient amount to maintain and operate its works; that the District's plan for the composition of its debts provided for the payment in cash of a sum equal to 59.978 cents for each dollar of the principal amount of its outstanding bonds in satisfaction of all amounts due; that creditors owning about 87 per cent. in the principal amount of the bonds had accepted the plan and consented to the filing of the petition; and that payment of the amount required was to be made from the proceeds of a loan which the Reconstruction Finance Corporation had agreed to make upon new refunding serial bonds equal to the amount borrowed and bearing interest at four per cent.

The District Court approved the petition as filed in good faith and directed the creditors to show cause why an injunction should not issue staying the commencement of suits upon the securities affected by the plan. The appellees as bondholders appeared and moved to dismiss the petition upon the ground that Chapter X of the Bankruptcy Act violated the Fifth and Tenth Amendments of the Federal Constitution. It appeared from the return to the order to show cause that these creditors had obtained an alternative writ of mandate from the state court directing the county board of supervisors to levy an assessment upon the lands within the District sufficient to pay the amounts due the complaining creditors, and that the proceedings in that court had been suspended pending the proceeding in the bankruptcy court.

First. Chapter X of the Bankruptcy Act is limited to voluntary proceedings for the composition of debts. Aside from the question as to the power of the Congress to provide this method of relief for the described taxing agencies, it is well settled that a

proceeding for composition is in its nature within the federal bank-ruptcy power. Compositions were authorized by the Bankruptcy Act of 1867, as amended by the Act of 1874, c. 390, sec. 17, 18 Stat. 182. It is unnecessary to the validity of such a proceeding that it should result in an adjudication of bankruptcy. In re Reiman, 20 Fed. Cas. 490, 496, 497; Continental National Bank v. Chicago, Rock Island & Pacific Rwy. Co., 294 U. S. 648, 672, 673. In the Continental Bank case, in the course of a full consideration of the scope of the federal bankruptcy power and of the evolution of its exercise, we said:

"The constitutionality of the old provision for a composition is not open to doubt. In re Reiman, 20 Fed. Cas. 490, 496-497, cited with approval in Hanover National Bank v. Moyses, supra. [186 U. S. at p. 187.] That provision was there sustained upon the broad ground that the 'subject of bankruptcies' was nothing less than 'the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief'. That it was not necessary for the proceedings to be carried through in bankruptcy was held not to warrant the objection that the provision did not constitute a law on the subject of bankruptcies'.

Second. It is unnecessary to consider the question whether Chapter X would be valid as applied to the irrigation district in the absence of the consent of the State which created it, for the State has given its consent. We think that this sufficiently appears from the statute of California enacted in 1934. Laws of 1934, Ex. Sess., ch. 4. This statute (Section 1) adopts the definition of "taxing districts" as described in an amendment of the Bankruptcy Act, to wit Chapter IX approved May 24, 1934, and further provides that the Bankruptcy Act and "acts amendatory and supplementary thereto, as the same may be amended from time to time, are herein referred to as the 'Federal Bankruptcy Statute'". Chapter X of the Bankruptcy Act is an amendment and appears to be embraced within the state's definition. We have not been referred to any decision to the contrary. Section 3 of the state act then provides that any taxing district in the State is authorized to file the petition mentioned in the "Federal Bankruptcy Statute". Subsequent sections empower the taxing district upon the conditions stated to consummate a plan of readjustment in the event of

its confirmation by the federal court. The statute concludes with a statement of the reasons for its passage, as follows:

"There exist throughout the State of California economic conditions which make it impossible for property owners to pay their taxes and special assessments levied upon real or taxable property. The burden of such taxes and special assessments is so onerous in amount that great delinquencies have occurred in the collection thereof and seriously affect the ability of taxing districts to obtain the revenue necessary to conduct governmental functions and to pay obligations represented by bonds. It is essential that financial relief, as set forth in this act, be immediately afforded to such taxing districts in order to avoid serious impairment of their taxing systems, with consequent crippling of the local governmental functions of the State. This act will aid in accomplishing this necessary result and should therefore go into effect immediately".

While the facts thus stated related to conditions in California, similar conditions existed in other parts of the country and it was this serious situation which led the Congress to enact Chapter IX and later Chapter X.<sup>1</sup>

Our attention has been called to the difference between Section 80(k) of Chapter IX and Section 83(i) of Chapter X of the Bankruptcy Act in the omission from the latter of the provision requiring the approval of the petition by a governmental agency of the State whenever such approval is necessary by virtue of the local law. We attach no importance to this omission. material, if the consent of the State is not required to make the federal plan effective, and it is equally immaterial if the consent of the State has been given, as we think it has in this case. should also be observed that Chapter X, Section 83(e) provides as a condition of confirmation of a plan of composition that it must appear that the petitioner "is authorized by law to take all action necessary to be taken by it to carry out the plan", and, if the judge is not satisfied on that point as well as on the others mentioned, he must enter an order dismissing the proceeding. phrase "authorized by law" manifestly refers to the law of the State.

Third.—We are thus brought to the inquiry whether the exercise of the federal bankruptcy power in dealing with a composition

<sup>1</sup> See Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 1868 and H. R. 5950, 1934, 73rd Cong., 2nd Sess.; Hearings before the House Committee on the Judiciary on H. R. 1670, etc., 1933, 73rd Cong., 1st Sess.; Ashton v. Cameron County District, 298 U. S. 513, 533, 534.

of the debts of the irrigation district, upon its voluntary application and with the State's consent, must be deemed to be an unconstitutional interference with the essential independence of the State as preserved by the Constitution.

In Ashton v. Cameron County District, supra, the court considered that the provisions of Chapter IX authorizing the bank-ruptcy court to entertain proceedings for the "readjustment of the debts" of "political subdivisions" of a State "might materially restrict its control over its fiscal affairs", and was therefore invalid; that if obligations of States or their political subdivisions might be subjected to the interference contemplated by Chapter IX, they would no longer be "free to manage their own affairs".

In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection. In the report of the Committee on the Judiciary of the House of Representatives,<sup>2</sup> which was adopted by the Senate Committee on the Judiciary,<sup>8</sup> in dealing with the bill proposing to enact Chapter X, the subject was carefully considered. The Committee said:

"Compositions are approvable only when the districts or agencies file voluntary proceedings in courts of bankruptcy accompanied by plans approved by 51 per cent of all the creditors of the district or agency, and by evidence of good faith. Each proceeding is subject to ample notice to creditors, thorough hearings, complete investigations, and appeals from interlocutory and final decrees. The plan of composition cannot be confirmed unless accepted in writing by creditors holding at least 66 2/3 per cent of the aggregate amount of the indebtedness of the petitioning district or taxing agency, and unless the judge is satisfied that the taxing district is authorized by law to carry out the plan, and until a specific finding by the court that the plan of composition is fair, equitable, and for the best interests of the creditors.

"The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to [in the Ashton case], and believes that H. R. 5969 is not invalid or contrary to the reasoning of the majority opinion.

"The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political sub-

<sup>&</sup>lt;sup>2</sup> H. Rep. No. 517, 75th Cong., 1st Sess.

<sup>8</sup> Sen. Rep. No. 911, 75th Cong., 1st Sess.

division is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable, and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill.

"There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts. Therefore, relief must come from Congress, if at all. The committee are not prepared to admit that the situation presents a legislative no-man's land.

It is the opinion of the committee that the present hill removes the objections to the unconstitutional statute, and gives a forum to enable those distressed taxing agencies which desire to adjust their obligations and which are capable of reorganization, to meet their creditors under necessary judicial control and guidance and free from coercion, and to affect such adjustment on a plan determined to be mutually advantageous".

We are of the opinion that the Committee's points are well taken and that Chapter X is a valid enactment. The statute is carefully drawn so as not to impinge upon the sovereignty of the State, The State retains control of its fiscal affairs. The bankruptcy power is exercised in relation to a matter normally within its province and only in a case where the action of the taxing agency in carrying out a plan of composition approved by the bankruptey court is authorized by state law. It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power. This is constantly illustrated in treaties and conventions in the international field by which governments yield their freedom of action in particular matters in order to gain the benefits which accrue from international accord. Oppenheim, International Law, 4th ed., vol. 1, §§ 493, 494; Hyde, International Law, vol. 2, § 489; Perry v. United States, 294 U. S. 330, 353; Stoward Machine Company V. Davis, 301 U. S. 548, 597. The reservation to the States by the Tenth Amendment protected, and did not destroy, their right to make contracts and give consents where that action would not contravene the provisions of the Federal Constitution. The States with the consent of Congrees may enter into compacts with each other and the provisions of such compacts may limit the agreeing States in the exercise of their respective powers. Const. Art. I, Sec. 10, subd. 3. Poole v. Fleeger, 11 Pet. 185, 209; Rhode Island v. Massachusetts, 12 Pet.

657, 725; Hinderlider v. La Plata River Company, decided — . The State is free to make contracts with individuals and give consents upon which the other contracting party may rely with respect to a particular use of governmental authority. See Fletcher v. Peck, 6 Cranch, 87, 137; New Jersey v. Wilson, 7 Cranch, 164; Dartmouth College v. Woodward, 4 Wheat. 518, 643, 644; Charles River Bridge v. Warren Bridge, 11 Pet. 420, 549; Jefferson Branch Bank v. Skelly, 1 Black. 436, 446. While the instrumentalities of the national government are immune from taxation by a State, the State may tax them if the national government consents (Baltimore National Bank v. State Tax Commission, 297 U. S. 209, 211, 212) and by a parity of reasoning the consent of the State could remove the obstacle to the the taxation by the federal government of state agencies to which the consent applied.

Nor did the formation of an indestructible Union of indestructible States make impossible cooperation between the Nation and the States through the exercise of the power of each to the advantage of the people who are citizens of both. We had recent occasion to consider that question in the case of Steward Machine Company v. Davis, supra, in relation to the operation of the Social Security Act of August 14, 1935. 49 Stat. 620. The question was raised with special emphasis in relation to Section 904 of the statute and the parts of Section 903, complementary thereto, by which the Secretary of the Treasury is authorized to receive and hold in the Unemployment Trust Fund all moneys deposited therein by a state agency for a state unemployment fund and to invest in obligations of the United States such portion of the Fund as is not in his judgment required to meet current withdrawals. The contention was that Alabama in consenting to that deposit had "renounced the plenitude of power inherent in her statehood". U. S. at pp. 595, 596. We found the contention to be unsound. As the States were at liberty upon obtaining the consent of Congress to make agreements with one another, we saw no room for doubt that they may do the like with Congress if the essence of their statehood is maintained without impairment. And we added that "Nowhere in our scheme of government—in the limitations express or implied of our federal constitution-do we find that she [the State] is prohibited from assenting to conditions that will assure a fair and just requital for benefits received".

In the instant case we have cooperation to provide a remedy for a serious condition in which the States alone were unable to afford relief. Improvement districts, such as the petitioner, were in distress. Economic disaster had made it impossible for them to meet their obligations. As the owners of property within the boundaries of the district could not pay adequate assessments, the power of taxation was useless. The creditors of the district were helpless. The natural and reasonable remedy through composition of the debts of the district was not available under state law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation. The bankruptcy power is competent to give relief to debtors in such a plight and, if there is any obstacle to its exercise in the case of the districts organized under state law it lies in the right of the State to oppose federal interference. The State steps in to remove that obstacle. The State acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue. Through its cooperation with the national government the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of state sovereignty, has reduced both sovereigns to helplessness in such a case.

Fourth.—As the bankruptcy power may be exerted to give effect to a plan for the composition of the debts of an insolvent debtor, we find no merit in appellant's objections under the Fifth Amendment. In re Reiman, supra; Continental National Bank v. Chicago, Rock Island & Pacific Rwy. Co., supra.

The judgment of the District Court is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.

Mr. Justice McReynolds and Mr. Justice Butler are of the opinion that the principle approved in Ashton v. Cameron County District, 298 U. S. 513, is controlling here and requires affirmation of the questioned decree.

Mr. Justice Cardozo took no part in the consideration and decision of this case.